SOUTH AFRICA.

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REPORT

OF THE

TRANSVAAL CONCESSIONS COMMISSION,

Dated 19th April 1901.

Presented to both Houses of Parliament by Command of His Majesty.

JUNE 1901.

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INTRODUCTION TO THE REPORT.

To the Secretary of State for the Colonies.

Sir,—We have the honour to report as follows:

1. In accordance with your instructions the Commission met in South Africa at the end of August 1900, and at once proceeded with the necessary work preliminary to their public sittings.

2. On the 8th September a notice defining the position of Her late Majesty's Government towards the concessions in question, was published at Cape Town by the order of Sir Alfred Milner, the High Commissioner, in the following terms.

"HIGH COMMISSIONER'S NOTICE.

No. 9 of 1900.

Notice is hereby given that every concession granted by the Government of the late South African Republic will be considered by Her Majesty's Government on its merits, and Her Majesty's Government reserves the right to decline to recognise or to modify any concession which may appear, on examination, not to have been within the power of the Government of the late South African Republic, having regard to any Conventions or Agreements made between Her Majesty's Government and the Government of the late South African Republic, or to have been granted without proper legal authority, or contrary to law, or the conditions of which have not been duly complied with, or which may appear to affect prejudicially the interests of the public.

By order of the High Commissioner,
F. Perry,
Acting Imperial Secretary."

Government House, Cape Town,
8th September 1900.

3. On the same day a notice defining the scope of the present inquiry was published by us in the following terms:—

"The Commissioners appointed to inquire into the concessions granted by the Government of the late South African Republic hereby give notice that they will, in the first instance, inquire into the following concessions, viz.:—

"1. Any concession conferring the sole and exclusive right of manufacturing, importing or dealing in any commodity in the Transvaal.

"2. Any contract made with the Government of the late South African Republic under the scheme approved by the Volksraad Resolution No. 1871 of November 1896.

"3. Any concession to the National Bank or to any other bank or banking institution.

"4. Any concession or contract for the construction or working of any railway or public tramway, or the public supply of water or light.

"The first sitting of the Commission will be held on 1st October 1900. Notice will subsequently be given of the place of its sitting. All persons desiring to be heard should communicate with the Commission before the above date. Communications must be addressed to the Secretary, Transvaal Concessions Commission, Library Buildings, Cape Town.

"Concessionaires should send to the Secretary statements of any evidence which they desire to give, and will be required to produce the documents on which they rely, translated into English, and notarially certified, in triplicate.

"Notice of objections to any concession should also be sent to the Secretary together with short statements of any evidence which it is desired to submit.

"By order of the Transvaal Concessions Commission,

Bernard Holland,
Secretary to the Commission.

Cape Town.
8th September 1900."

4. On the 19th September the following further notice was published by our direction :—

"With reference to the notice of the 8th September 1900, published in the 'Cape of Good Hope Government Gazette Extraordinary' of that date, the Transvaal Concessions Commission hereby give notice that their first sitting will be held at the Library Buildings, Cape Town, at 10.30 a.m. on the 1st October next and subsequent days, and that sittings will be held at the Government Offices at Pretoria on the 10th October and subsequent days.

"In order to facilitate the arrangement of business and to enable the Commission to meet, as far as possible, the convenience of persons interested, the Commissioners require that the statement of evidence and documents referred to in the notice of 8th September 1900, be placed in the hands of the Secretary to the Commission on or before the 26th instant.

"By order of the Transvaal Concessions Commission.

Bernard Holland,
Secretary to the Commission.

Cape Town,
19th September 1900."

Full publicity was given to all these notices both in the South African and the London newspapers.

5. On the 3rd October and the two following days public sittings were held at Cape Town, and we then proceeded to Pretoria, where we held further sittings until the end of that month.

We then returned to London, where we have held several further public sittings, of which full notice was given beforehand, for the convenience of persons interested in concessions who had been unable or unwilling to attend in South Africa.

6. The still unsettled condition of the Transvaal during our inquiry there, the difficulties and even the dangers of locomotion,* and the fact that many persons interested in our proceedings were not residing there in consequence of the continuance of the war, were, no doubt, circumstances which rendered it difficult to make our investigation as complete as it might have been in pacific times.

We believe, however, that we obtained, in the cases which we heard, sufficient information to enable us to form a judgment as to the validity of each concession and the degree to which it was, or was not, prejudicial to public interest.

General Position of Government with regard to Concessions.

7. It is desirable to state here the broad principles which we considered applicable to the problem before us.

8. On the 1st September 1900, Her late Majesty annexed the territories and obliterated the sovereignty of the South African Republic. It has, therefore, become necessary that the new Government should decide in what relation it stands to the concessions granted by the Government of the late Republic, and upon this point we submit the following observations.

* See, *e. g.*, in the evidence of Mr. Whitty, a Gas Concessionaire, his account of his capture by a Boer Commando at Geneva Siding, when on his way to Pretoria to present his claim. A. 4148-53.

9. It is clear that a State which has annexed another is not legally bound by any contracts made by the State which has ceased to exist, and that no court of law has jurisdiction to enforce such contracts if the annexing State refuse to recognise them.* But the modern usage of nations has tended in the direction of the acknowledgment of such contracts. After annexation, it has been said, the people change their allegiance, but their relations to each other and their rights of property remain undisturbed : † and property includes those rights which lie in contract.‡ "La conquête change les droits politiques des habitants du territoire, et transfere au nouveau souverain la proprieté du domaine public de son cedant. Il n'en est pas de même de la proprieté privé qui demeure incommutable entres les mains de ses legitimes possesseurs."§ Concessions of the nature of those which were the subject of our enquiry presented examples of mixed public and private rights : they probably continue to exist after annexation until abrogated by the annexing State,‖ and, as matter of practice in modern times, where treaties have been made on the cession of territory, have been often maintained by agreement.¶ In considering what the attitude of a conqueror should be towards such concessions we are unable to perceive any sound distinction between a case where a State acquires part of another by cession, and a case where it acquires the whole by annexation. The opinion that in general private rights should be respected by the conqueror, though illustrated and supported by jurists by analogies drawn from the Roman law of inheritance, is based on the principle, which is one of ethics rather than of law, that the area of war and of suffering should be, so far as possible, narrowly confined, and that non-combatants should not, where it is avoidable, be disturbed in their business : and this principle is at least as applicable to a case where all, as where some of the provinces of a State are annexed.

10. Though we doubt whether the duties of an annexing State towards those claiming under concessions or contracts granted or made by the annexed State have been defined with such precision in authoritative statement, or acted upon with such uniformity in civilised practice, as to warrant their being termed rules of international law, we are convinced that the best modern opinion favours the view that, as a general rule, the obligations of the annexed State towards private persons should be respected. Manifestly the general rule must be subject to qualification, *e.g.*, an insolvent State could not by aggression, which practically left to a solvent State no other course but to annex it, convert its worthless into valuable obligations; again an annexing State would be justified in refusing to recognise obligations incurred by the annexed State for the immediate purposes of war against itself; and probably no State would acknowledge private rights, the existence of which caused, or contributed to cause the war which resulted in annexation.

11. Subject to these reservations His Majesty's Government in dealing with the concessions in question will probably be willing to adopt the principle which, in the case of the annexation of Hanover by Prussia (the modern case most nearly corresponding with that under consideration) was proclaimed by the conquerors in the following terms : "We will protect every one in the possession and enjoyment of his duly acquired rights."**

12. The acceptance of this principle clearly renders it necessary that the annexing Government should in each case examine whether the rights which it is asked to recognise have, in fact, been duly acquired. It is an obvious corollary that the rights in question must be valid not only by reason of due acquisition in the first instance, but by reason of their conditions having been subsequently duly performed.

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* Cook v. Sprigg. Law Reports 1899. Appeal Cases, 572.

† U.S. v. Pencheman. 7. Peters, American Rep. Opinion of Chief Justice Marshall, p. 86, §7.

‡ Soulard v. U.S. 4. Peters American Rep. . . p. 512.

§ Calvo. Le Droit International, 2478. Hallek. Internat. Law, p. 831.

¶ Huber Staaten Succession, p. 149. Martens Noveau Recueil.

‖ Prussia and Netherlands, 1816. Peace of Zurich, 1859. France and Sardinia, 1860. Peace of Vienna, 1864. Cession of Venetia, 1866. Germany and France, 1871. Great Britain and Germany, 1890.

** Royal Prussian Patent, 3rd Oct., 1866.

13. Applying these principles more in detail to the case of the concessions with which we have had to deal, we have come to the conclusion that the cancellation of a concession may properly be advised when

(i.) The grant of the concession was not within the legal powers of the late Government; or,

(ii.) Was in breach of a treaty with the annexing State; or,

(iii.) When the person seeking to maintain the concession acquired it unlawfully or by fraud; or,

(iv.) Has failed to fulfil its essential conditions without lawful excuse.

In any case, falling within these categories, where there has either been no "duly acquired" right, or there has been a non-fulfilment of essential conditions by the concessionaire, cancellation or modification without compensation appears to us in the absence of special circumstances to be justifiable.

14. We further think that the new Government is justified in cancelling or modifying a concession when—

(v.) The maintenance of the concession is injurious to the public interest.

15. In this last case, however, the question of compensation arises, inasmuch as it would be inequitable that a concessionaire should lose without compensation a right duly acquired, and whose conditions he had duly fulfilled, because the new Government differed from the old in its view as to what was, or was not, injurious to public interest even though the opinion of the new Government were obviously the true one. We do not consider the actual amount of compensation payable as a matter within the scope of our inquiry, but we submit the following observations as to the principles relevant to the question:—

In determining the amount of compensation in respect of losses sustained by the owner of a concession cancelled or modified as injurious to the public interest, regard may justly be paid to the question whether the owner, at the time when he received, or acquired the concession, knew, or reasonably ought to have known, that it was precarious. A concession may be precarious for many reasons, but it certainly is so, if the subject matter of it is closely related to large and changing public interests. In such matters, no reasonable man can anticipate that a Government can indefinitely fetter the legislation of the future; and indeed, in countries such as Great Britain, where opinion is tender to vested interests, modification without compensation has been made in the statutory powers and privileges of undertakings incorporated under Parliamentary powers and relating to gas, water, electric light, public transport, and other subjects with which the well-being of the community at large is closely bound up.

16. We submit also that no concessionaire can rightly claim to be placed in a better position under the new than under the old Government, and therefore in assessing compensation to any owner of a concession in respect of his loss, the value of his interest should be taken as it was before the war which has resulted in annexation, and before the superior credit and stability of the annexing State have appreciated his property.

17. On the other hand, when public interest requires the modification or cancellation of a justly acquired concession, due consideration ought properly to be shown in cases where new, and under the circumstances, hazardous enterprises have been pioneered into stability in an unsettled and undeveloped country where profit was uncertain, and total loss a possible contingency.

Procedure.

18. We directed the procedure of the inquiry as follows: In each case, we held that the onus of proof was upon the concessionaire to establish the validity of his concession, and that it was not injurious to the public interest. In addition, we publicly intimated that any concessionaire failing by his default to appear before us and give evidence, so failed at his peril.

19. As a general rule, the holder of a concession and any other witnesses whom he desired to bring were, in the first place, heard and examined. Objectors to a concession were then invited to make any statement or to give evidence. Without imposing upon our proceedings the strict formalities of a court of law we allowed both concessionaires and objectors to be assisted by legal advisers and Counsel. Considerable use was made of this facility, and besides the legal advisers of concessionaires, there were present at the inquiry legal representatives of the present Government of the Transvaal, the Johannesburg Chamber of Mines, and Chamber of Commerce, and of the Johannesburg and Pretoria temporary municipal authorities.

20. We held that the following matters were outside the limits of our enquiry, viz. :—

1. Concessions which were in contemplation before the war, and in respect of which various steps had been taken, but which admittedly had not been completed.

2. Concessions originally granted in Swazieland.*

3. Concessions of a purely private character, such as way-leaves for running a tramway or conducting light or water entirely for the use of a mine, or group of mines, or other private property, and not affecting the public.

4. Contracts with the Government of the late Republic for doing some special piece of work, such as constructing a railway line in which the interests of the contracting party ceased with the completion of the work.

21. The concessions into which we inquired at our public sittings were the following :—

Railways, and Tramways not purely Municipal.

(1.) Netherlands South African Railway.
(2.) Selati Railway.
(3.) Ermelo Railway.
(4.) Pretoria-Pietersburg Railway.
(5.) Johannesburg-Boksburg Tramway.
(6.) Albertskroon-Johannesburg Tramway.

Manufacturing and Trading Concessions.

(1.) Dynamite Concession.
(2.) National Bank Concession.
(3.) Liquor, or Hatherley Distillery, Concession.
(4.) Iron Concession.
(5.) Leather Concession.
(6.) Agreements under Industrial Scheme of 1896 :
  (*a*) Soap Factory.
  (*b*) Matches.
  (*c*) Cocoa and Starch.

Concessions of Rights of a Municipal Character

(1.) Pretoria and Johannesburg Bonded Warehouses.
(2.) Pretoria Market.
(3.) Johannesburg Market.
(4.) Pretoria Tramway.
(5.) Johannesburg City and Suburban Tramway.
(6.) Pretoria Water Supply.
(7.) Johannesburg and Zuurbekom Water Supply.

* A joint court appointed by the British Government and the Government of the late South African Republic have already inquired and reported as to the Swazieland Concessions.

(8.) Wonderfontein Water Supply.
(9.) Pretoria Electric Lighting.
(10.) Rand Central Electric Supply.
(11.) Heidelburg and Krugersdorp Gas Supply.

In addition to these concessions and agreements there are some, in regard to which the holders did not seem to think it worth their while to appear, either because they were of small importance, or because nothing had been done under them, or because their term had almost expired.

General Observations.

22. Before giving the results of our investigation into each concession, we may observe that when the idea of a new industry, supply of water or light, or means of locomotion was mooted in the South African Republic, it was not unusual for the President and executive authorities to grant the right of working it to some weighty burgher, to be followed sometimes, but sometimes not, by confirmation by the Volksraad. The possessor of the right then sold it, usually very soon, for a sum bearing some proportion to its prospective value to a foreigner, of Hollander, German, British, or other nationality, who in his turn dealt with it, or formed a company to put it into effect. This practice of, as it were, tapping concessions at their source for the benefit and refreshment of well-connected burghers did not excite any surprise nor, indeed, much indignation, until practical inconvenience began to be felt owing to the burthens imposed by some of the concessionaires upon industry.

23. Another point to be observed is that in the South African Republic the spheres and powers of the legislative and executive authorities were so little distinct, and constitutional practice was in so embryonic a stage of development, that there is considerable difficulty in ascertaining when the consent of the Volksraad was, and when, if ever, it was not, necessary for sanctioning the concession of rights by the executive authorities.

24. In connection with these doubts two questions of great importance arose touching closely the subject of our inquiry :—

1. Whether the President and the Executive Council had power to grant *exclusive rights* to persons to pursue any industry or work any undertaking, or
2. To grant rights *not* exclusive to persons to supply towns or districts with gas, electric light, water, or trams moved by machinery.

The learned advocates who appeared before us were unable to assist us greatly on these questions, as they informed us that no judicial decisions were recorded on them, and, indeed, a resolution of the Volksraad itself had frankly proclaimed the bewilderment of that body on the subject.

25. Under these difficult circumstances the only course open to us, in order to arrive at the conclusions set forth below on these two questions was, in the first place, to examine the consolidated and amended Law of the Constitution promulgated on 19th November, 1889,* and in the second place, to search the official records of the Volksraad† since that date, with the object of ascertaining whether any constitutional usage can be said to have supplemented the written law.

26. In the first place then, had the President and the Executive Council the power to grant *exclusive rights* to pursue any industry or work any undertaking?

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* Some amendments have been since made in this Law, not material to the points under consideration, notably the creation of a Second Volksraad, but that body was never intended to have substantial power, its competency was confined to a few specified matters, and its acts could always be overruled by the First Raad. The Law is printed at the beginning of the volume of Appendix of Documents.

† These are the official records of the proceedings of the Volksraad read out every morning of Session in the Assembly, and after correction confirmed by signature of the Chairman and Secretary of the Volksraad.

27. Under the Law of the Constitution the form of Government of the State was prescribed to be that of a Republic (Article 2), and the nation entrusted the legislative function to the hands of the Volksraad, which was in two articles definitely asserted to be the highest authority in the country, and the Legislative Power. (Articles 12, 26.)

The Executive power was vested in the President in conjunction with the Executive Council of which he was the *ex-officio* chairman. The President was responsible to the Volksraad. (Art. 56.) He was the first and highest official in the State, and all public officials were subject to him, but the members of the Volksraad were not public officials, and all judicial officers were wholly free and independent. (Arts. 29, 57, 82.) To the President was entrusted the task of placing the proposals of laws before the Volksraad (Art. 64) and of submitting annually to that body estimates of State income and expenditure, over which it had absolute control. (Art. 70.) But he had no vote in the Volksraad. (Art. 82.) All officials appointed by him were subject to approval and dismissal by the Volksraad (Arts. 13-76), and military matters were mainly entrusted to the Commandant-General, who was elected for ten years. It will be seen then that the President had under the written law no uncontrolled patronage, no veto on the acts of the Legislature, no power to select his associates on the Executive Council; and as the Volksraad was in substance a single-chambered authority, no opportunity of playing off a second chamber against it. Thus, though the forcible personality and strong will of Mr. Kruger obscured the real facts of the Constitution, and produced upon careless observers the impression of authorised autocracy, the truth is that there is scarcely any other Chief Magistrate in any country whose legal authority was confined within more narrow limits.*

After careful study of that Constitution we are satisfied that under it the legislative supremacy of the Volksraad was absolute, and that there is no legal basis for the claim that the President and Executive had any legislative authority whatever.

28. It appears to us that the grant to any person of an *exclusive right* to pursue any industry or work any undertaking connotes a law prohibiting all persons except the grantee from exercising that right, and is therefore an act within the sphere of legislation. It follows that in our opinion every such grant was invalid in the South African Republic unless it was expressly or impliedly sanctioned by the Volksraad.

The only case in which we have found evidence of a general sanction by the Volksraad accorded to the President and Executive Council to grant *exclusive rights* is in the case of concessions to persons to construct and work tramways along roads by *animal power only*, undertakings peculiarly favoured by the representatives of a farming community interested in the sale of forage.†

After the best investigation we have been able to make we are unable to find any evidence of constitutional usage in regard to the grant of exclusive rights repugnant to, or supplementary of, the written law on the subject.

Our conclusion, therefore, is that, with the exception above pointed out neither by law nor by constitutional usage had the President or the Executive Council any power to grant exclusive rights.

29. We proceed to consider the second question, viz., whether the President and the Executive Council had power to grant rights *not exclusive* for supplying towns or districts with gas, electric light, water, or trams moved by machinery.

30. We are unable to find in the written Law of the Constitution a warrant to the President or Executive Council to grant such rights, nor do we consider that there is any legal foundation for the contention made before

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* Bryce. Two South African Constitutions. "The Forum." April, 1896.

† See Resolutions of Volksraad, Art. 592, 4th July, 1890, and Art. 2249, 7th December, 1896

us that other legislation had authorised them to do so. A Resolution of the 1st Volksraad, No. 77 (12th May, 1890) whereby the Raad authorised the Executive to amend or supplement the Town Regulations and make such general or special provisions and regulations as might be considered advisable in the interest of public order, peace and good health of the towns, or of a town, to be of force until the following Session of the Raad was particularly relied on by Mr. Roos, the able representative of the Pretoria Waterworks. But it will be observed that the authority granted to the Executive was only *temporary*; and the Town Regulations which were administered by the Landrost (Grondwet, 1889, Art. 139, 140), and which may be described as mere sanitary bye-laws, give that official no powers of the kind. It was, however, further urged that Law 10 of 1886 conferred powers to grant the rights in question on Town Councils formed thereunder, and that a resolution of the 1st Volksraad (No. 1102 of 11th August, 1892), sanctioned the use by the Executive of those powers in towns where a Town Council had not been created. We have most carefully examined the provisions of the Law 10 of 1886, and are satisfied that under it Town Councils were not endowed by the Legislature with any such powers, and that there is therefore no foundation for the contention that the Executive, in cases where Town Councils did not exist, possessed them.

31. Instances are, indeed, to be found where the President and the Executive Council granted non-exclusive rights, and where afterwards those grants were treated as effective and acted on without any distinct disavowal or protest by the Volksraad. But the official records convincingly show that the practice had not been sufficiently continuous or uniform to deserve the name of a constitutional usage.

These records, on the contrary, contain numerous entries inconsistent with the legality of such a practice, and proving that in matters of infinitely smaller moment the Volksraad jealously maintained its rights. Instances of these are given in the Appendix to this Report. Some obscurity does however envelop the question, and the indisposition which obviously existed on the part of both the Volksraad and the President—the parties to the controversy—to push it to extremities, has tended to increase it.

32. The best opinion we can form on the matter is that the legal title of the owners of concessions of these important municipal rights is, in the absence of the sanction of the Volksraad, infirm. Apart from all legal difficulties, we have already pointed out other reasons for considering such concessions as precarious and under these circumstances we think that it would be an equitable adjustment of the private and public interests concerned that, in the event of His Majesty's Government deciding in any way to recognise these concessions, and thereby to secure the uncertain titles of their owners, such recognition should take place on terms. The general basis of these terms we suggest may be found in the legislation affecting gas, electric lighting, water, and tramway undertakings in England, which, in exchange for the powers and facilities granted to promoters, exacts corresponding obligations from them, secures to the local authority reasonable control, limits profits, and provides for expropriation after an adequate period. These terms need not, of course, be identical in each case, but may be varied according as the conduct of the owners of the concession has or has not been in the widest sense of the term meritorious.

In particular, where companies are concerned, in cases where the facts can be ascertained, consideration may be directed to the circumstances of their promotion, the *bona fides* of their capitalisation, the difficulties and risks of their business, including herein those arising from the novelty of the subject matter, the uncertainty of the continued development of the town or district where business was carried on, etc.; for on matters such as these the question whether a greater or less profit, a shorter or longer period of existence, more or less liberal terms of expropriation, be granted, should depend. Where it has been possible we have endeavoured to furnish data for consideration of these matters in the following Reports which deal separately with each concession.

33. We now proceed to make these separate Reports. In most cases we have dealt with each subject under the following heads and in the following order, viz. :

(1.) History of the Concession.

(2.) Terms of the Concession.

(3.) Operations under the Concession.

(4.) Objections (if any) made to the Concession.

(5.) Validity of the Concession.

In two or three of the more complicated cases, however, we have not strictly followed this arrangement. Our recommendations with regard to each Concession will be found at the end of the Report specially dealing with it.

34 In the course of our inquiry it appeared that there were Government assets arising out of Concessions, Shares in Companies, claims to participate in profits, &c., which devolve on the new Government, a schedule of which we have attached to our Report.

PART I.

RAILWAYS, AND TRAMWAYS NOT PURELY MUNICIPAL.

1. NETHERLANDS SOUTH AFRICAN RAILWAY.
2. SELATI RAILWAY.
3. ERMELO RAILWAY.
4. PRETORIA-PIETERSBURG RAILWAY.
5. JOHANNESBURG-BOKSBURG TRAMWAY.
6. JOHANNESBURG-ALBERTSKROON TRAMWAY.

THE NETHERLANDS SOUTH AFRICAN RAILWAY.*

The Concession.

History of the Concession.

1. On the 27th May, 1885, the Volksraad of the South African Republic conferred on the Executive Government authority to grant a concession for a Railway from the Portuguese Frontier through Nelspruit to Pretoria. The Government deputed the duty of negotiating this grant in Holland to a number of gentlemen, who, constituting what was called at the time the Transvaal Deputation, conferred a provisional concession on a number of persons on the understanding that it should be re-transferred free of charge to a limited company. The holders of this provisional concession floated the Netherlands South African Railway Company, Limited, in Holland in June, 1887, and the concession itself was with certain changes renewed and confirmed to the Company by the Volksraad on the 25th June, 1890. On the 27th September, 1893, the 27th Article was amended so as to facilitate the nationalisation of the lines constructed under its provisions. D. 3.

Terms of the Concession.

2. This concession granted to a limited company, and confirmed by a resolution of the Volksraad dated 25th June, 1890, gave to the concessionaires the exclusive right to build and work all railways or steam tramways in the South African Republic which either should connect with foreign railways or steam tramways, or with navigable rivers, or with the sea, or which might be considered as "entering into competition with any of the "lines or any part thereof for which the Company then holds a Concession, "whenever the Volksraad resolves that such a line shall or may be built." It was provided that this right should not apply to such railways or steam tramways as should be built and worked by the State. D. 1.

3. In addition to this great privilege, which virtually gave to a single company the exclusive right to construct and work all the main lines in the Transvaal, the concession conferred upon the Company certain minor advantages, such as the free gift of Government land and the right of running over public streets and roads, the Government retaining for itself reasonable supervision over the Company in respect of construction, working regulations, and so forth. The Government also granted to the concessionaires exemption from import duties upon all material required for the building and working of the railway.

4. The Company were authorised by the Concession to issue shares and debentures up to an amount of £9,600 per mile. These shares and debentures, when countersigned by the Government Commissioner in the Netherlands, received from the Government a direct guarantee of interest according to the conditions of each issue; in the case of the debentures redemption of the capital was also guaranteed.

5. Maximum fares and rates were fixed in the Concession upon terms favourable to the Company, the power of sanctioning alterations being reserved to the Government.

6. The Company was charged with the office of collecting the import, export, and transit duties payable at the Portuguese frontier on goods conveyed by railway, and the Custom moneys so collected were carried to the general revenue of the Company, and produced a large portion of the surplus profit.

* Throughout these reports the letter A in the margin followed by a number denotes a reference to an answer by a witness in the volume containing the Minutes of Evidence. The letter D followed by a number denotes a reference to a document in the Concession in the volume of Appendices of Documents. It will be understood that most of the documents quoted in these reports are translated by responsible persons from the Dutch, hitherto the official language in the Transvaal.

7. The Concession contained a clause enabling the State at any time, upon giving a year's notice, to expropriate the railway upon certain terms.

If such expropriation should take place on the 1st January, 1915, or at any time from ten to ten years after that date, the Government were to pay (1) the sum required for the complete liquidation of the Company, and (2) an amount equal to twenty times the average dividend allotted to the shareholders for the last three years then preceding, provided that the latter amount should not be less than twenty times the guaranteed annual interest for those shareholders on whose shares an annual dividend of 5 per cent. or more had been guaranteed, nor less than the full nominal amount of those shares on which a lower annual dividend than 5 per cent. had been guaranteed.

In case the expropriation should take place prior to the 1st January, 1915, it was provided that the expropriation price should be increased at the rate of 1 per cent. of the nominal share capital for every year that the expropriation should anticipate that date.

8. The Concession thus provides for the distribution of the Company's earnings.

From the gross receipts the following deductions are to be first made:—

i. Ten per cent. of the gross receipts of the main lines, and eight per cent. of those of the Rand Tram (so separately provided in the Agreement regarding it) put to Reserve; *

ii. The working expenses;

iii. Interest and sinking fund on loans, and the guaranteed dividend; and *of the balance* then remaining,

Eighty-five per cent. was payable to the Government of the South African Republic;

Five per cent. to the Company's servants, *and*

The rest was available for distribution as "extra dividend" to the Shareholders.

A specimen distribution may be of interest:—

	£	s.	d.
Gross Earnings of 1898	2,715,877	2	2
Deduction i. Reserve Fund	264,744	2	7
„ ii. Working Expenses	1,390,327	2	3
„ iii. Interest and Sinking Fund on Loans, and Guaranteed Dividends	384,475	16	8
Total Deductions	2,039,547	1	6
Balance available for Distribution	676,330	0	8
85 per cent. to Government	574,880	10	7
5 per cent. to Company's Servants	33,816	10	0
Available for Distribution as Extra Dividend on Share Capital	67,633	0	1

(Out of which a 7 per cent. extra dividend was declared.)

9. We desire to call special attention to Section 22 in the Concession, which is, in English, as follows:—

"If there be danger of war, war itself, or interior disturbances, the "railway and all that is requisite for the use thereof shall, in the interests "of defence, or of the public peace, be at the absolute disposal of the "Government, which may cause the usual traffic thereon to be wholly "or partially stopped, and give orders for all measures it may deem "necessary, subject to the Concessionaire receiving indemnification."†

A clause in substantially the same terms exists in the concessions to other railway companies in the Transvaal.

* The "Reserve Fund" was not what is usually understood by that name, a fund not generally employed in, or amenable to the ordinary risks of, the Company's business, but available for use in emergency; it was a sum of money annually set aside to meet charges for maintenance, renewal, and extensions.

† This translation of the clause was made for the Commission by Mr. J. A. J. de Villiers, of the British Museum.

Establishment and Constitution of the Company.

10. The "Netherlands South African Railway Company," to which this concession was granted, was established in Holland, and confirmed there by Royal decrees dated 2nd July, 1887, 1st September, 1890, and 17th December, 1892. D. 2

Letters of incorporation were issued to the Company in the Transvaal on 28th June, 1889, under Law 6 of 1874. A. 458.

The Company is therefore a foreign Company, established and having its headquarters in one State, and constructing and working railway lines in another.

11. The administration of the Company is entrusted to managing directors, under the supervision of a Board of Commissioners.

The Board of Commissioners, who are elected by the shareholders, were to consist of not less than five and not more than eleven members, and it is expressly provided in the Articles of Association that at least half of their number shall be Netherlanders living in the Netherlands. The managing directors are elected by the general meeting of shareholders, after two persons have been recommended for each vacancy by the Board of Commissioners, and they may be suspended from office by a resolution of the Board of Commissioners, and may be dismissed by a resolution of the shareholders.

12. It is stated in Section 19 of the Articles of Association that the managing directors represent the Company, and are authorised to perform all such actions as come within the province of the Company, but that the approval of the Board of Commissioners is required for all actions outside the ordinary course of management. It is further declared that the Board of Commissioners exercise unlimited control and supervision over the actions and proceedings of the managing directors, subject to the power of referring any special question to the decision of an extraordinary general meeting of shareholders. It was thus the clear duty of the Board to control the policy as distinguished from the administrative routine of the Company's operations.

13. At the date of our inquiry there were nine commissioners, and two managing directors. One of the managing directors, Mr. Van Kretschmar, was resident in the Transvaal, having entered upon office there on the 1st January, 1899. The other managing director, Mr. Van den Wall Bake, was resident in Holland.

Capital of the Company.

14. A complete account of the operations of the Company, from the date of the grant of the Volksraad's authority in 1885 to the retreat of its staff from Ladysmith on the 1st March 1900, will be found on pages 5–8 of its report for the year 1899. D. 3.

15. The subjoined table shows the lines constructed by it previously to the war:—

Lines constructed.

	Miles.
The Eastern Section—	
Pretoria-Resano Garcia	295
Barberton Branch Line for Kaapmuiden	35
The Southern Section—	
Pretoria-Elandsfontein	37
Elandsfontein-Johannesburg	10
Elandsfontein-Elsburg	4½
Elsburg-Vaal River	36½
Loopline or triangle	1
The South-Eastern Section—	
Elsburg to Natal Border	160
The South-Western Section—	
Krugersdorp to Klerksdorp	97
The Rand Tram—	
Springs to Elandsfontein	21
Johannesburg to Krugersdorp	20
Total Mileage	717

Of these, the Rand Tram was built by the company under a special and separate contract,* of which it is only material to record that the terms limited the cost to £8,000 (eight thousand pounds) per mile, instead of to £9,600 (nine thousand six hundred pounds); while the South-Western section, Krugersdorp to Klerksdorp, was laid by the Company on account of the Government and at its charge, and under the Government's promise to make good the loss on working it.

16. The ordinary share capital of the Company consists of—

	£.	s.	d.
A. 11,000 shares each of 1,000 guilders (£83 6s. 8d.), carrying a 6 per cent. Government guaranteed dividend	916,666	13	4
B. 3,000 shares each of 1,000 guilders (£83 6s. 8d.), carrying a 4½ per cent. Government guaranteed dividend	250,000	0	0
Total	£1,166,666	13	4

or, guilders 14,000,000.

The annual dividend thus guaranteed came to £66,250, equal to guilders 795,000; but the Government had itself subscribed for a number of shares, and in 1897 held 5,713, of the value £476,083 6s. 8d.†

17. In the event of a surplus being available for distribution among the shareholders, both classes of shares were entitled to equal rates of distribution from it.

The extra dividends in 1896, 1897, and 1898, were 7½ per cent., 7 per cent., and 5¾ per cent. respectively, and the total dividends paid by the Company during the three complete years preceding the war were:—

1896.		1897.		1898.	
A Shares.	B Shares.	A Shares.	B Shares.	A Shares.	B Shares.
13½	12	13	11½	11¾	10¼

In these years the State received by way of its 85 per cent. of surplus profits the sums recorded below, beside which for purposes of comparison there have been set the several sums contributed to those surpluses by the Customs receipts collected on the Portuguese border, and paid into the railway chest.

1896.		1897.		1898.	
Surplus paid the State.	Customs Revenue intercepted by Railway.	Surplus paid the State.	Customs Revenue intercepted by Railway.	Surplus paid the State.	Customs Revenue intercepted by Railway.
£ 676,305	£ 346,522	£ 574,880	£ 308,932	£ 651,712	£ 260,253

A little less than one half the State's surplus was thus merely a deduction from its Customs Revenue.

18. The Company has also from time to time issued Debenture loans with interest guaranteed by Government at different rates, but mostly at 4 per cent.

* Rand Tram Concession, not printed in the Volume of Appendix of Documents.

† Report of the Transvaal Railway Commissioner for the year 1897, not printed in the Volume of Appendices. The Director of Military Railways in 1900 reported the number to be 5,788.

The Company's balance sheet of the 31st December, 1899, showed outstanding Debenture charges of £7,209,516 13*s.* 4*d.*, but it took credit against these for Debentures "in Portfolio" to the value of £9,416 13*s.* 4*d.*, so that its outstanding Debenture issue was of £7,200,100, and the annual charge £291,504.

The Share and Debenture capital embarked in the Company's business thus computes to

£8,366,766 13*s.* 4*d.*,

and the guaranteed annual return to

£357,754.*

19. It may be of interest to note how the total capital compares with the sum which, by Article 31 of the Concession, the Company was authorised to expend otherwise than "under control and with the cognisance of the Government Commissioner, with the consent of the Government, with advice and consent of the Executive Council."

The authorised rate was £9,600 a mile, and the length of the Company's lines, constructed under the Concession, returned at 579 English miles, would justify a capital expenditure of

£5,558,400,

to which should be added the authorised capital of the Rand Tram, 41 miles at £8,000 per mile,

£328,000,

or a grand total of

£5,886,400.

The £8,366,766 13*s.* 4*d.* capital now outstanding is less than the whole sum issued, some Debentures having been from time to time redeemed, and it follows that the capital exhibits an excess of substantially two and a half millions.

20. No officer of the railway appeared before us who was competent to explain its financial position, the excuse offered being that its accounts were kept in Holland, and the onus, therefore, still rests on it of explaining the difference, and of showing that the authorities required by paragraph 3 of Section 31 of the Concession for the excess have been duly given and received.

Staff of the Company.

21. The Company employed a numerous staff of men of various nationalities, by far the larger proportion consisting of subjects of the kingdom of Holland, not burghers or naturalised in the Transvaal. The subjoined list is supplied by the annual report of the Company, which was drawn up in April, 1899, D 3. and shows the state of things almost as it was at the outbreak of the war:—

Nationality.	Not a Burgher and not naturalised.	Burgher.	Naturalised.	Total.
Netherlands subjects	1 536	174	67	1,777
Africanders, South African Republic	10	60	—	70
Africanders, Orange Free State	73	15	1	89
Africanders, Cape Colony	532	52	21	605
Africanders, Natal	8	5	—	13
Germans	163	33	1	197
Englishmen	113	2	—	115
Scotchmen	22	—	—	22
Irishmen	8	—	—	8
Australians	5	—	—	5
Mauritians	4	—	—	4
St. Heleners	1	—	—	1
English Indians	1	—	—	1
Swedes	42	2	—	44
Norwegians	10	—	—	10
Danes	4	1	—	5

* Extracted from the printed annual reports of the Railway Company.

Nationality.	Not a Burgher and not naturalised.	Burgher.	Naturalised.	Total.
Belgians	12	—	1	13
Russians	13	—	—	13
Poles	3	—	—	3
Austrians	13	1	—	14
Hungarians	1	—	—	1
Slavonians	1	—	—	1
Frenchmen	11	—	—	11
Swiss	16	2	—	18
Italians	99	1	—	100
Spaniards	1	—	—	1
Portuguese	5	—	—	5
Greeks	4	—	—	4
Asia-Minor	1	—	—	1
Persians	2	—	—	2
Americans	9	—	—	9
Total	2,723	348	91	3,162
Of which Africanders of the two Republics and Colonies	623	132	22	777

Position of the Company.

22. We thus see an entirely foreign company in possession of a position of great advantage in the Transvaal territory. The privileges conceded to the Company were unquestionably of high value. The second clause of the Concession granted not merely what may be called the ordinary exclusive powers, or inevitable natural monopoly, in respect of certain specified lines, but gave in substance exclusive powers to build and work in the future all "through" railways and tramways in the country. It is true that the State reserved its own right to do the same, but this reservation was practically illusory in view of the very heavy stake held by the State in the Company, owing to the guarantee given to the debenture and shareholders, and to the large interest in the surplus profits secured to the State.

Tariffs.

23. Endowed as it was with these powers and privileges, and armed with tariffs drawn to a most generous scale, the Company speedily aroused in an acute form the resentment of the industrial and commercial community against its charges, a resentment not diminished by regulations under which the Company attempted to divest itself of many of the common law liabilities of carriers.* Bitter complaints were made for years of the oppressive character of these rates and regulations, but it was not contended before us that the Company had at any time exceeded its maximum rates, or had committed in this respect any breach of the terms of the Concession. The complaints of the public were heard by the Industrial Commission appointed by the Volksraad in 1897. That Commission in its report held that the tariffs charged by the railway were too high, and recommended a lessening of the rates on goods equivalent to an average reduction of 25 per cent., the reduction to be chiefly applied to the carriage of coal, timber, mining machinery, and foodstuffs. We understand that certain rates were subsequently reduced by the railway company, and, though complaints continued, they do not appear to be different in nature from those which in varying degrees are made by traders affected against railways everywhere.

24. Under these circumstances we did not consider it to be necessary, or within the ambit of our reference, to enter upon a critical examination

* See *e.g.*, the arguments of Mr. Curlewis and Mr. Lance on behalf of the Johannesburg Chamber of Mines and Chamber of Commerce. (Minutes of Evidence, Tenth Day).

of tariffs. According to precedents of legislation generally considered to be equitable, it would have been competent to the Government of the South African Republic to have revised, notwithstanding the terms of the Concession, the maximum rates, when change of circumstances rendered such revision reasonable and desirable, and this power attaches to the successors of that Government.

Question whether there are grounds for Cancellation.

25. We were unable, owing to the refusal of the Amsterdam Board to appear before us, and owing to the absence at Pretoria of all books or documents relating to that period to make any comment on the initiation of the Company or the contract of construction, but one of our members, Mr. Loveday, has been enabled by his knowledge of Dutch to extract from the Records of the Volksraad and the Company's reports, notes of the objections put forward from time to time in that Assembly against the management of the Company in both those respects. These notes will be found in the Appendices.

26. No impeachment was made in evidence before us of the legality of the Concession itself, which appears to have been within the power of the Government to grant, and to have been duly granted according to law.

27. The question remains whether the Concession ought to be cancelled as prejudicial to the public interest, and, if so, whether any, and what, compensation should be paid to those who are interested in it. In our opinion it is injurious to the public interest that the construction and working of trunk lines of railway communication in any country should be a monopoly in the hands of a single private company, and the injury is aggravated by the fact that the monopolist company is foreign, and the seat of its administration in a foreign country. And we think, therefore, that this concession is one that it would in any case have been proper to terminate, even had the conduct of its business been open to no reasonable complaint. But in the course of our enquiry there was substantiated against the Company so extraordinary a course of action in the war between Great Britain and the South African Republic, as to preclude the possibility of its continuance in what is now a British possession.

Proceedings previous to the War.

28. On the 3rd August, 1900, in consequence of certain information received by him, an order was made by the Military Governor at Pretoria, then occupied by Her Majesty's forces, under which all the books and documents in the offices of the Netherlands Company were seized. A searching investigation of these papers was then made by Mr. G. V. Fiddes, C.B., of the Colonial Office, then Political Secretary to the Commander-in-Chief, assisted by Mr. Van Hulsteyn, a leading solicitor of Johannesburg, acting in an honorary capacity as assistant to the Political Secretary. To these gentlemen is due the credit of the discovery of the convincing documents to which we shall now refer. Of these documents, the most important are the diary and letter-books of Mr. Van Kretschmar, the managing director of the Company resident in the Transvaal, certain accounts connected with the war, and certain reports made by officials of the Company with regard to belligerent operations conducted by themselves.

29. The diary mentioned above reveals Mr. Van Kretschmar during the months immediately preceding the war, not as a railway manager awaiting in a neutral attitude any steps which the Government should see fit to take under Section 22 of the Concession, but as a vigorous guide and counsellor to a Government unable to make up its own mind as to the railway organisation necessary to be undertaken in view of the approach of war. A. 549.
He felt surprise that the Government were in this important matter in so unready a condition. "On the 21st July," he says, "I wrote a letter to "General Joubert to impress upon him that he should, anyhow as far as this "railway might be concerned in the defence, give some suggestions with "regard to the traffic that might be expected, the destruction of railway "lines, etc. As a consequence thereof I had an interview with him a few "days later, from which it appeared that he had absolutely no plan of "defence."

30. General Joubert had heard that there was in Natal an armoured train with which the Transvaal would be invaded, and wished to thwart this by letting loose a locomotive to run against it. Mr. Kretschmar pointed out the practical objection to this scheme of defence. He went away with the impression that so far as the General was concerned, "neither assistance nor "leadership was to be expected." He could not even obtain from him any idea of the places where burghers and horses would be entrained.

31. The fear of sudden invasion by armoured train still haunted the Boer leaders, and on the 19th August, Mr. Van Kretschmar was summoned to the Executive Council to discuss this subject. President Kruger asked him what he intended to "do if the English should attempt to enter into the "country by rail." Mr. Van Kretschmar replied that the "proper means "to delay such a train for a long time would be to destroy a large bridge." He suggested for this purpose the bridge at Standerton, but proposed that a place further down the line should also be selected where the invading train might, in the first instance, be upset or detained and brought under fire. The scheme was approved by the Council, notwithstanding the opposition of General Joubert, and orders were given that officers of the artillery and the telegraph services should make preparations in co-operation with three railway experts. Artillery officers were at once despatched to select the preliminary blocking place, and they recommended one at Paardekop, writes Mr. Van Kretschmar, "so beautiful that Trichardt said that not a single man "would come out of it alive." At the same time he sent three officials of the Company, namely, Barensburg, Swemer, and Schoof, together with stores of dynamite and electrical apparatus, to Standerton.

32. A little later we again find Mr. Van Kretschmar summoned to the Executive Council to discuss the delay of the Portuguese authorities in transmitting supplies of ammunition from Delagoa Bay, and on the 22nd August he is once more in consultation with the President with regard to the plan for thwarting the apprehended invasion by railway. He advised the President that the place destined for the destruction of the English invading train should be covered by artillery, or a commando, or by both, and he represented to him that "orders for the blowing up of bridges could be carried out by "us, but could not be given by us, and that we could not take the respon-"sibility thereof, and that the proper moment must be decided by the military authorities." On the 24th August Mr. Van Kretschmar attended a "very solemn" meeting of the Executive Council, in which the general policy of military defence was discussed. "After the meeting," he writes "Trichardt came to my office, and I gave him in general outlines in writing "my ideas, which he would take to the General."

33. On the 5th September Mr. Van Kretschmar, called to the Executive Council, was able to report that all was in order for the blocking of the line at Standerton and at Paardekop. He told the Council that it was "absolutely necessary that I should be recognised in the measures to "be taken, because our staff could not act without my instructions, and I "had to receive my instructions from the authorities." In an interview with Trichardt on the 8th September Mr. Van Kretschmar "insisted that "our people, who were charged with the blowing up (at Standerton) should "be commandeered as burghers of the Republic," and at the same interview the arrangements for entraining and transporting burghers were discussed. It is clear, therefore, that for some months before the declaration of war, and for some time before the Executive Council resolution of the 13th September, hereafter mentioned, was passed, the managing director of the Netherlands Railway in the Transvaal was *suo motu*, initiating and suggesting measures for carrying on the anticipated war against the British in the most effectual way. From the Manager and not from the Boer Authorities came the request that he should be recognised; it was his insistence and not their duress which caused the railway employés to be commandeered.

34. In his statement made in August, 1900, Mr. Van Kretschmar says
A. 457. that it was his opinion, and that of his directors at Amsterdam, that, under Article 22 of the Concession, "No obstacles should be placed in the "Government's way, and we were also of opinion that at the same time it

" would be better for the interests of the shareholders if the performance " thereof by order of the Government were carried out by experts and " officials entrusted with railway matters." He adds that the Government thought that even without formally taking over the railway the Company was at its service, but that he, at a meeting of the Executive Council, " made " it appear evident that we as a private Dutch Company could not volun- " tarily place the railway at the disposal of the Government." The policy pursued by Mr. Van Kretschmar is fully and clearly set forth in the following letter which he addressed to the Government Commissioner of Railways on the 6th September, 1899 :—

" At the interview which I had with you yesterday it appeared to me " that you did not consider it necessary that the Government should make " use of its right according to Article 22 of our Concession to dispose of the " railways, because you were of opinion that our Company offered sufficient " guarantee for the carrying out of the instructions which it would receive " from the Government in the time of war.

" Although I highly appreciate this confidence from your side, and I " also do not doubt that it would not be put to shame, yet I am of " opinion that in the interest of my Company I must urgently request that " the Government should appply the said measure.

" For what is the position? Every act committed by the railway in the " service of one of the belligerent parties may be considered as an act of " war, and should the chances of war unexpectedly turn against the Republic, " then it would be useful to us as a private company that our responsibility " should be covered by the Government.

" For if the Government makes use of its rights, then the whole of our " railway and the whole staff is, according to the Concession, in the service " of the State, and all acts performed by our staff may be considered as " ordered by the Government.

" For this only an Executive Council resolution is necessary, and notice " thereof to me.

" This resolution should, according to my idea, only contain the fact that " the Government makes use of its rights according to Article 22 of the " Concession, and takes over the disposition of the railway, and that our " staff will have to conduct itself according to the orders of the military " officers and other authorities. It would also be advisable that the whole " staff be commandeered to do service in their official capacities with the " railway service, apart from the possibility that they may afterwards be " charged with the carrying out of military operations.

" The position then remains the same as now, as we, of course, remain " charged with everything, and to continue the service as long as possible " . . . . I request you respectfully to introduce an Executive Council " resolution in that spirit to be passed.

" The Management,

(Signed) " J. VAN KRETSCHMAR.

" To the Government Commissioner of Railways."

35. In accordance with the request thus urged the following Executive Council Resolution was passed on the 13th September :—

" Minute R. 12830/99 (U.V.R. 1178/99) containing correspondence with " the Direction of the Netherlands South African Railway Company, " relating to Article XXII. of the concession of the aforesaid Company, in " which it is enacted that, when there is danger of war, in the actual " time of war, or in case of internal disorders, the Government, in the " interest of the defence or of public order, may have the control of the " railway and of everything required for the use of the same, and suspend " the ordinary traffic thereon, wholly or partially, and order all such " measures as appear to it to be necessary, with reservation of com- " pensation to the concessionary, and request of the Direction of that " Company to allow the Government to make use of that right.

" The Executive Council, having consulted the Government Commissioner " for Railways, having regard to the fact that this State, under the

"present circumstances and the now political state of affairs, is actually "in danger of war, considering that under these circumstances it is possible "that burghers will have to be sent to the frontiers in order to guard them, "and that it is desirable for that object that the Government should have "the free disposal of the railway,

"Decrees: That it will make use of its rights according to Article "XXII. of the Concession, approved by the Volksraad besluit, Article 502, "25th June, 1900, and withdraw the railway with everything belonging "thereto and required for the use thereof, from the control of the Direction "of the Netherlands South African Railway Company and take the same "entirely under its own control.

"For the object of duly making use of the railway, the whole of the "persons employed by the Company aforesaid shall be commandeered "to perform duties on the railway in the functions in which they are now "employed, and they shall be placed under the orders of the Commandant-"General and the military officers or other officials to be appointed by "him, in the sense that those who can be spared from the railway service "may also be commandeered by the Commandant-General for the "performance of ordinary military duties."

"Furthermore the Executive Council decrees: That the railway pro-"visionally, till further order, shall be worked in the usual manner, and "that the ordinary traffic and the usual order of the trains shall be "maintained until the Commandant-General shall eventually introduce "changes therein."

This decree came into force on the 29th September, by notice given on that date to the managing director.

The Service Orders.

36. The administrative machinery under which the hostile measures thus concerted were carried out took the shape of certain "Service Orders" issued by Mr. Van Kretschmar to his staff.* The first of these orders, numbered 32 and dated 6th September, 1899, provided that no employé of the Company should take part in the apprehended war, "unless commandeered" to do so by the proper authority," and laid down the principle that "no services should be voluntarily done for the enemy." "Services "are not to be voluntarily rendered to the enemy," and "should the "enemy exercise compulsion, then compliance must be given on sufferance, "but efforts must be made to withdraw oneself as much as possible, and "as soon as practicable."

The second Service Order (No. 33), dated 7th September, declared that, "In case, "by the laws of the South African Republic, the "staff of the Company are commandeered to take part in expeditions or "to render services in some other manner in connection with the defence," the Company guaranteed to those who could be spared half-pay if they were single and two-thirds if they were married. If any employé "would voluntarily take service without being commandeered and is "accepted by the military authorities, permission for this may be granted "by the Chief of the division, without salary, however, and after payment "of a guarantee for such an amount as the person concerned may "eventually be indebted to the Company, provided the railway service "allows of it. If he cannot be spared, however, he shall then have to choose "between not taking service and discharge." Such commandeered or volunteer employés, so long as they were doing military or other services for the Government, were "not considered to be in the service of the "Company," but if the Government no longer required their services they were to be taken back into the service of the railway.

A third Service Order (No. 34) was issued by Mr. Van Kretschmar on the 18th September, 1899, strictly enjoining the staff to keep secret, under penalty of dismissal and possible criminal prosecution all "instructions, "documents," etc., relating to the "internal service" of the Company.

* These Service Orders are printed in full in the Minutes of Evidence at the end of the Fifth Day's proceedings.

This was followed on 20th September by the following Order (No. 35), signed, like the rest, by Mr. Van Kretschmar, for the Directorate. "Through "information received from Committees constituted at some places, which "purport to organise the rendering of assistance by Hollanders and "ex-Hollanders in the event of an eventual defence of the country, it appears "that many of the staff are of opinion that Order 33 prohibits them from "submitting their names to those Committees. This is in nowise the case. "The submitting of names to the Committees shall not be considered as a "voluntary offering of services, and is generally recommended, as those who "with a later commandeering can be spared can thus join the constituted "organisations, while their interests are being taken care of by the "Committees."

On the 29th September, the day of the issue of the decree of the Executive Council, a fifth Service Order, numbered 36, was issued, in the following terms :—

"The Government has made use of the right given to it in the concession "to our Company to dispose of the railway and of everything belonging to "it when there is danger of war in the interest of the defence.

"All the persons employed have been commandeered according to Art. 2 "of Law No. 20, 1898, to do service on the railway in the posts they now "occupy, under the orders of the Commandant-General, on the under- "standing that all instructions and orders relating to the carrying out of "the service shall be given to the persons employed in the usual manner "by the railway authorities.

"The persons employed must, however, according to the range of their "duties, as much as possible obey the direct orders of military authorities "and officers after having asked for instructions if necessary from the "station-master immediately over them."

We observe that, of these Service Orders those numbered 32, 33, and 36 are printed in the Annual Report of the Company for 1899, laid before the shareholders in the summer of 1900, but that those numbered 34 and 35 are not included in that Report. D. 3.

37. The general understanding between Mr. Van Kretschmar and the Government clearly was that every employé, of whatever nationality, who could be spared from the actual railway service, should be at the disposal of the Government for military duties, and Mr. Van Kretschmar admitted, in his statement, that, in many instances, he supplied the Government with lists of the men most available. We call special attention to the fact that he went much further than this, and brought the strongest pressure to bear upon non-burghers who did not wish to take arms in the quarrel. A. 457.

38. It will be observed that, under the Service Order of the 7th September, employés of the Company who were not commandeered for military service, but who volunteered for it, and were given permission by the railway authorites, were to have leave of absence without pay. As a matter of fact many employés were made to choose between volunteering for military service and being discharged altogether from that of the Company. It was alleged by Mr. Van Kretschmar that the war having caused a great decrease in the ordinary traffic, the Company had a larger staff than was required under existing conditions, and were, therefore, entitled to discharge those who did not accept the alternative of leave of absence without pay on military service. The fact remains that to discharge an employé, far from his European home, in a country in a state of war, where no other employment could be obtained, was to inflict a penalty of the severest kind upon those non-burgher employés who refused to fight for the Boers. That many of the foreigners in the railway service, thus virtually commandeered by the Company itself, felt strong objections to the process, appears from the fact that Mr. Van Kretschmar had to address a circular letter of explanation to the foreign consuls at Pretoria, who had brought the grievance of their fellow-countrymen before him. A. 661, 667 & 668, and see statement of August, 1900. A. 457. Annexure 8 to Statement.

39. We have referred to the injunctions in the Orders to the Staff to take no part in the struggle unless thereto lawfully commandeered, and to carry no arms whether on or off duty, and to the declaration that so long

as they were doing military or other services for the Government they should "be considered not to be in the service of the Company." It
A. 532. need hardly be pointed out that these provisions cannot alter the true nature and character of the operations organised by Mr. Van Kretschmar, or relieve the responsibility incurred thereby. Mr. Van Kretschmar did not succeed in explaining in his evidence how he could have supposed that the Boer Government were warranted in commandeering foreigners, subjects of nations friendly to Great Britain, to take part in hostilities against her. On the contrary, his knowledge that *this could not lawfully be done* may be inferred from the ingenious and plausible efforts made in the Service Orders to combine hostility in substance with neutrality in form.

40. We may add that this actual question had been the subject of litigation in the Transvaal Courts and Chief Justice Kotze had in a formal judgment declared, that though foreigners domiciled in the Transvaal could be called on to do service in the police or militia for the purpose of maintaining internal peace and order, it was clear that they could not be compelled to take part in a war against a Power with whom their own nation was at peace, nor of course against their own country.* It is true that this decision was given before the enactment of Law 20 of 1898, Article 3 of which enacts that "the military forces of the South African Republic "consist of all white and coloured male inhabitants above sixteen years "of age, and shall be called out for the maintenance of order, for "*commandoes* on the occasion of internal rebellion, for the defence of the "country, and for war against external enemies." This article, however, is immediately followed and limited by Art. 4, which expressly defines a "commando" as in this Law meaning "an expedition of armed *burghers* "*and subjects of the State*" called out in certain eventualities, among which is included that of war against external enemies. It would appear, therefore, that the Transvaal Government did not attempt, even by legislation, enacted so shortly before the war as December, 1898, to override the settled law of civilised nations, which had been emphasized by the Chief Justice in judicial decision in 1894, but on the contrary distinguished between the obligation incumbent on all *inhabitants* to maintain order and that laid on all *burghers and subjects* to join in offensive or defensive wars.

41. All preparations having been made the policy resolved on was for many months energetically pursued, and, in no small measure, the delay which the Boers were able to interpose to the advance of the British forces was due to the vigorous and scientific assistance of the staff of the Netherlands Railway Company. Their operations have been so graphically and fully described by Mr. Van Kretschmar himself, in a letter addressed to the Amsterdam directorate, that it is best to let him tell the story in his own words. This letter, translated, is as follows:—

"Mail of 6th May.
"In reply to letters 10th } Received
"March, 20/23 March. } 27th April, 1900.

"Pretoria, 28th April,
"Saturday, 1900.

"DEAR SIRS,

. . . . . .

"Your remarks with regard to strict neutrality of the "Netherlands South African Railway Company are not very refreshing "to me, especially as they come now when the chances have turned against "the Boers. If it should come to the worst and the English become "masters here, I am afraid that we have hopelessly compromised ourselves "in deed, word, and writing. We have made cannons and ammunition; "we have sold material to the Republic; we have blown up bridges on "English territory, and have not discharged our staff on commando. And "we have assisted the Orange Free State with advice, and indeed with "persons and material, and there are in existence letters, telegrams, and

* Field Cornet of Pretoria *versus* Maynard and others known as "The Commandeering Case." July, 1894.

" living witnesses, that we have strongly supported the Government in its " defence. I have everything covered as much as possible by orders, but " I have never yet adopted the appearance that we object to the carrying " out of them. On the contrary, there are proofs that we have been but too " willing to do everything that is in the interests of the Republic. How " could it be otherwise? We have always proclaimed how we serve the " interests of the State, how the Government could always reckon on us " under difficult circumstances; yes, how we almost were *plus royaliste* " *que le roi.* Everybody knows that, and I can well understand that our " Hollander gang is not beloved in London. We cannot be neutral and " adopt the appearance that we had to be forced under protest to perform " war service; but even that appearance would not have been accepted " by anyone as the truth. As against the Republic we would not be *bonâ* " *fide* if we did not interpret Article 22 of the Concession in the manner that " the Government could dispose of our railway and ourselves as if it were " their property and we their officials. It is entitled to expect from " us not only that we should do our duty as faithful servants, but even " that we should give them the disposal of our tact and judgment as " something which in the words of Article 22 belongs to 'which is required " for the use thereof.' It does not do under these circumstances to rely on " our status as a Netherlands Company or simply as a financial under- " taking. We have accepted the Concession to do business, but the " Government gave it to us because they trusted us, and were of opinion " that the interests of the country would be best served by a railway in " the hands of a private Netherlands Company. We have therefore the " moral obligation on us to justify that trust under all circumstances. " Imagine to yourself that we had interpreted the neutrality strictly, and " that we had only acted on receipt of instructions, that we had made no " preparations as to measures of which we foresaw the necessity, that " we limited ourselves to administration and maintenance, would we then " not have had the same condition which is now so much regretted in the " Orange Free State? But, in addition, we cannot interpret our neutrality " thus because we are people who cannot act against our feelings. We " may act and apparently object, but if our position must depend upon " that then we are truly in a sorry position. I cannot imagine that this can " have any influence on the English judgment. We are a Netherlands " Company to make money, but we have a Transvaal railway. The former " may be neutral, but not the second. In addition, is it so certain " that England will become absolutely master here, even if finally " she wins the war? Surely on this subject there is even doubt in Europe. " Suppose the Republics keep their independence wholly or partially, would " then our Company's interests not have been served better by our attitude " during the war than by a pretended neutrality which would clearly have " shown the necessity of expropriation. I do not say anything as to the " Netherlands national interest which we as Hollanders gladly serve, but " which we are not called upon to do as a financial undertaking. I frankly " admit that our position in the event of an English victory is precarious with " regard to the carrying out of the Concession conditions, expropriation, the " payment of compensation, etc., but even if we had during the war adopted a " hostile attitude to the Republics I cannot imagine that this would have " made England more favourable towards us. In addition, our whole " business is founded on debts guaranteed by the State more or less equal to " National debts, the holders of our bonds have a direct claim on the State. " Suppose that it had been a State railway, then the State would have " had to contract loans therefor. Would a conqueror now simply ignore " State loans because, with the proceeds it had exploited the railway during " the war, or even because it had bought war material and ammunition for " it? I believe that England will be wise enough not further to annoy the " holders on the Continent by directly touching their pockets. Perhaps " there may be some dangers to the expropriation price of our shares under the " Concession, perhaps also with regard to the full payment of our other debts, " although I consider the Continental influence strong enough to ensure that " even these will be discharged in full. Naturally we must keep ourselves " from an active military part. Service Order 32 provides for this entirely.

and relieves the Directorate of all responsibility for this. This is my "idea of our position. I have already, by asking for special orders, tried "as much as possible to save the appearance of neutrality. According to "the interpretation which you adopt in your last letter I have not always "succeeded in this. We have, it is true, done things which we were not "obliged to do according to the letter of the Concession. For instance, "I might have said our workshop cannot make or repair cannons, we can "shoe no horses, make no tents, no ammunition, etc., we have no one who "can work with dynamite; we were not obliged to lend men to the Orange "Free State Government; we are not going to pay our men on commando; "we were not obliged to exploit railways outside of the State, and "our neutrality prohibits us to enter into an agreement with you to that "effect; I have no material for this or that commando, our oil is finished, "and now we cannot run, etc., etc. I would like to know how soon I "would, then, have gone the way of the manager of the Pretoria-Pietersburg "line, who was immediately put over the border when he tried to maintain "his neutrality. I would also then have liked to hear your judgment, you "who were proud of it when you heard of the "ZASM"* deeds of heroism "in the destruction of bridges, etc., who wished for special data in order to "make mention in our yearly report of the active part which we took in the "defence of the country. The adversity of the Republics must have sorely "touched you in order to make you all of a sudden so anxiously neutral. "No, we are now once for all in the boat, and we must remain in it to the "other bank. A railway under conditions such as ours is exposed to such "dangers and chances, and we must in a manly way meet them and look "them in the face. To save our life by playing "chameleon" every time "that the prospects or positions change appears to me to be impossible. "Had I to do that then when Roberts was before Pretoria, and had the "Southern, South-Eastern, and South-Western lines in his possession, I "should humbly offer him to work those lines for him, or if I were locked "up here, instruct the staff to do so. I have no intention to do this, and "the staff must keep itself to Service Order 32. How everything will go "I cannot say, but I suppose everything will be solved, and, in a state of "war, one must not mind it so much if sometimes we have unpleasant "moments, because one cannot prepare for all eventualities.

"I hope that you will agree with the above.

. . . . . .

"With the making of ammunition it will then be finished. Before our "departure we should explode our workshop and empty our offices. Well, "when the time comes we will see.

. . . . . .

"Yours,
"(Signed) J. VAN KRETSCHMAR."

42. Mr. Van Kretschmar impressed us in the witness box as a man of honour and good faith, and, notwithstanding its rhetorical vigour, we regard this letter as a wholly trustworthy statement of what occurred. If he wrote the letter in somewhat hot blood, he fully confirmed the statements of fact in cool blood, in his deposition made in August, 1900, and in his subsequent
A. 457. evidence before us. In his deposition he said, "The Government used the "workshops and staff of the Company on a large scale for repairing guns, "making subordinate "parts of ammunition, shoeing horses, etc."

In illustration of the truth of this we may quote a passage from a letter
D. 4. written by Mr. Van Kretschmar to Mr. Smit, the Government Railway Commissioner, on the 20th December, 1899. He writes: "As you know we "are now taking upon ourselves many matters which do not directly belong "to the department of the railway service, such as repairing of cannons, "shoeing horses, and making subordinate parts of projectiles. I now wish "to refer to the latter. We are making, namely, to the order of the "Dynamite Company, the headpieces of shells for Krupp guns, viz., the

* Initials of the Zuid Africaansche Spoorweg Maatschappij, *i.e.*, South African Railway Company.

"" so-called 'time fuses.' These shells are completed by the Dynamite Com-
"" pany, Delfos Brothers, and the representatives of the French Creusot
"" Company. Amongst these co-workers, ourselves included, I do not
"" consider one to be experts in the manufacture of ammunition, and although
"" I do not doubt that with good will and proper co-operation a sufficient
"" result will be obtained, yet I consider it of the greatest importance that
"" a final test of our joint work should be made by an impartial expert."

43. Again, in his statement made in August, 1900, Mr. Van Kretschmar says: "Some of " the staff were commandeered for special service, such as A. 457.
" destroying roads, bridges, etc., not in connection with our railway. This
"" was done with my knowledge. We then agreed with the Government
" that they should receive the usual wages which we would pay, and which
" we would debit the Government with, but that they should be in the
"" employ of the authorities under whom they were placed, and that we
"" should only concern ourselves with their financial statements. There was
" not the slightest supervision on my part over their acts."

In a letter to the Amsterdam Directorate, dated 28th February, 1900, Mr. Van Kretschmar relates that "We have withdrawn our railway service at Modderspruit and taken the rolling stock back to Glencoe. All cannons
" have also been brought over. All bridges and culverts between Modder-
"" spruit and Elandslaagte have been destroyed; Westenberg with his
"" destruction staff forms the rear-guard. . . . News has just been
"" received from Westenberg that all works up to Glencoe have been
"" thoroughly destroyed." Moreover, with regard to these deeds of destruction on the Natal Government Railway line there is among the D. 6.
captured papers an elaborate report by Westenberg himself.

Nor did the officials of the company distinguish themselves less in the Free State territory. In a letter to the Amsterdam Directorate of 17th March, 1900, Mr. Van Kretschmar refers to the blowing up of the bridges A. 551.
across the Orange River by their staff under Van Eelde, and in his statement of August he states that the staff assisted in the destruction of bridges, etc., during the retreat of the Boer forces through the Free State. An inquiry made at Johannesburg in June, 1900, by the military authorities, very ably conducted by Major Hon. T. Cochrane as President, elicited D. 8.
depositions by several eye-witnesses, themselves servants of the Company, as to particular acts of destruction done under the direction of officials of the Company on the Natal and Free State railways.

44. Mr. Van Kretschmar's letter of the 28th of April, which we have quoted in full, is, therefore, a weighty and trustworthy document, not only because the statements contained in it are the contemporaneous and unbiassed record, by the leading representative of the Company in the Transvaal, of operations which he himself organised, but because many of his statements are verified, where verification is possible, by other witnesses.

45. The evidence entirely satisfied us that belligerent acts of the kind indicated were performed by officials and servants of the Company, acting upon the general instructions of their chief in the Transvaal, and with his knowledge and approval.

Responsibility of the Board of Commissioners.

46. We are further of opinion that the Board of Commissioners at Amsterdam knew at an early date, and, at first at any rate, approved of the warlike policy of their representative in South Africa. We are led to this conclusion by the following reasons:—

1. The letter of 28th April, which has been quoted at length, itself addressed to a managing director and a member of the Board of Commissioners, refers to the pride of his correspondents, when they heard of " the
" ZASM deeds of heroism in the destruction of bridges, etc., and to their
"" request for special data, in order to make mention in our yearly report of
"" the active part which we took in the defence of the country."

2. It was the practice of Mr. Van Kretschmar to write a letter every week to his colleague, Mr. Van den Wall Bake, the managing director in A. 493, 555, 559, 619.
Holland, and, as he told us in his evidence, all these letters were also read

by, and many addressed to, Mr. Middelburg. This gentleman had formerly been managing director in South Africa, and intimately acquainted with Transvaal affairs, and was in the period 1899–1900 a member of the Board of Commissioners. It was not suggested by Mr. Van Kretschmar that there was any seal of confidence or secrecy attached by him to these letters, or that they were not intended for the information of the whole Board.

3. The Board of Commissioners appear to have received large remuneration for their services, and were bound by the constitution of the Company to exercise "unlimited supervision and control over the actions and pro-
D. 2. "ceedings of the managing directors." Their approval was required for "all actions outside the ordinary course of management," and they had power to suspend from office a managing director if they disapproved of his conduct. It would require strong evidence to convince us that these gentlemen, in a time of war, when the most vital interests of the Company were involved, when moreover, one member of their body at least was admittedly fully informed—did not avail themselves of the obvious sources of information, but remained in wilful ignorance of the policy which had been adopted. Such evidence as we received points the other way. For Mr. Van Kretschmar stated that he supposed that the Commissioners were consulted upon questions of policy in connection with the war, and in the ordinary course would supervise the actions of the managing director in South Africa, and added that he believed that the Board of Commissioners were fully informed
A. 514 to 519 and 620 to 624. as to what he was doing with regard to the war, and that he had received no remonstrance or objection from them.

4. The annual report of the Company for the year 1899 was presented by
D 3. the Directorate to the Board of Commissioners on the 7th June, 1900, and laid on the table at the general meeting of the shareholders in the same month. This report mentions the use of the railway, its workshops, and its staff in the conveyance of troops, the making and repairing of war material, the shoeing of horses, the destruction and repairing of railways, and the working of railway lines outside the frontier. It does not appear that the report elicited any comment or remonstrance from the Board or from any other quarter.

5. If, lastly, the Board of Commissioners were not aware of the action taken by Mr. Van Kretschmar it would have been easy to assert their ignorance. Mr. Van Kretschmar, it is true, destroyed all the letters he received, during the critical period, from his colleagues in Europe, in order to save them from falling into British hands, but he stated that the letter-
A. 634–5. books containing copies of these were, no doubt, at Amsterdam. These letter books, which would probably be conclusive as to this point, were not produced. We may add that, although we examined Mr. Van Kretschmar, who had remained at Pretoria, no direct representative of the Board of Commissioners appeared before us in South Africa, although a public notice of our sittings was given several weeks before they were held. In case there should have been any misunderstanding as to whether the case of the Netherlands Railway fell within the scope of our inquiry a specific invitation was sent to the Board of Commissioners to appear before us in London after our return to England, but they have declined to avail themselves of the opportunity thus afforded.

47. We have seen that this Foreign Company, the subject of a power friendly to Great Britain, numbering in its staff of about 3,160 persons, 440 only who were, as burghers or naturalised, liable to be commandeered, and purporting to observe a strict neutrality, did initiate and organise before war was declared elaborate plans, and afterwards effectively carried them out, causing great damage, delay, and loss to the Queen's armies. It is difficult to understand for what reason the Company should have adopted this aggres-
A. 640 sive policy, unless, indeed, the "dream of a Greater Holland," the disappearance of which, by reason of the British military successes, Mr. Van Kretschmar laments in one of his letters, throws some light upon the matter. Patriotism was not divorced from business, and there is evidence to indicate
A 636–37. that with the dream of a Greater Holland was blended one of a longer and more lucrative Netherlands Railway.

48. The feelings which animated Mr. Van Kretschmar himself are vividly expressed in his diary. We consider that the following passage is material to our Report and worthy of record as showing how opportune the Managing Director held the moment to be for hostilities against Great Britain. "The fire," he wrote on 11th September, 1899, "is smouldering everywhere. "England is at issue with the United States as to the boundaries of Canada "and Alaska; in China she has to be constantly on the watch not to tread "on the toes of Russia. In Abyssinia Menelik is growing unruly. In "Ireland the tone of the press grows daily more violent in opposition to the "Government policy in the Transvaal; and in England itself their policy "is condemned by the labour party, which see in it nothing but the baleful "influence of capital. In every country hatred of England is increasing. "I grow constantly more and more certain that if it comes to a great war, "however long it be delayed, England will stand alone, and this circum-"stance will make it all the more clearly evident that she is resolved on "the arbitrary slaughter of Afrikanderdom. Nothing but good can come "out of it to the Dutch race in this part of the world, although in the "beginning it entails a heavy expenditure of life and money. The fall of "England shall be the crown of the end of the 19th century. It is now "nearly four years since I wrote to Heer Bake, after the Jameson raid, "that I looked forward to the end of the supremacy of the English in "South Africa, and believed that we were drawing near its conclusion."* D. 10.

49. Mr. Van Kretschmar, in his evidence, maintained that the whole action of the Company with regard to the war was justified, and indeed made necessary, by the terms of Art. 22 of the Concession. "I consider," he said, "that the Government, by Art. 22 of the Concession, had the same right "over us as if it had been a State railway. We did what we thought a State railway would have done." The same position is taken up in the annual report of the Company, in a passage to which we have already referred. It reads as follows:— D. 3, A. 570, and *see* D. 113.

"The Government of the Republic has made a liberal use of their privileges "by employing our railway, the workshops, etc., for the conveyance of troops, "the making and repairing of war material, and the shoeing of horses, "has often ordered the people employed by us to help in destroying and "repairing railways, and also to keep in good condition and to work the "railway lines outside the frontiers in the name of the Government. The "Government, according to the Concession, had a perfect right so to act "and the persons in our employment were always bound to perform the "task assigned them."

All these orders of the Government, the report adds, had been faithfully obeyed by the employés of the Company.

50. If this argument be correct, and the railway became lawfully a State Railway, it would pass on annexation, together with all other property of the South African Republic, absolutely into the hands of the annexing State. But in our opinion the contention that the words of Art. 22 can justify the belligerent operations of the Company is without foundation. It is impossible that the obligations of a commercial contract can justify subjects of one State in carrying on organised hostilities against a friendly State. The very making of the contract would be a breach of the established principle of international law.

51. We do not, however, agree with the Company in thinking that the clause can bear the construction which they have placed upon it. In our opinion the true construction is that, on the occasions of war or internal trouble indicated, the Government shall have a right to take over and use the railway itself and its rolling stock and other equipment. The staff might, perhaps without breach of neutrality, upon such an occasion, serve the Government in the ordinary business of the railway; but we find in Clause 22 no language which could make it the duty of the Company to hand over to the Government its staff of railway-men, most of whom

* The first portion of this diary is printed in the volume of Minutes of Evidence, in the Fifth day's proceedings. It is continued up to the actual outbreak of the war in the volume of Appendix of Documents, among those relating to this Concession. (D. 10.)

See paragraph 21, *ante.*

were subjects of Powers friendly to Great Britain, for enrolment in commandos, or for their employment in repairing guns and making shells, in blowing up bridges, and destroying lines outside as well as inside the Transvaal territory.* It could not reasonably be contended that on a conveyance to him of a "railway and all that is required for the use thereof," a purchaser could claim that the employés passed under the grant with the lines, buildings, rolling stock, and other material.

52. The close connection of the Company with the Government of the South African Republic in the war has, in our opinion, been already established. That the connection was of a strongly political character appears from other circumstances also. So, for instance, the captured papers show that, during the war, a certain Mr. Hargrove, an Englishman, who sympathised with the cause of the Republic, applied to President Kruger for money to pay the expenses of a movement which he proposed to make in Cape Colony and in England, in favour of peace. The Government feared that it would be said that Republican money had been paid out to win round public opinion, and they recommended Mr. Hargrove to Mr. Van Kretschmar for financial support. On the 3rd February, 1900, the Company paid to Mr. Hargrove the sum of £1,000, which was, according to Mr. Van Kretschmar's note, "debited to the account 'Political "Situation' to be hereafter arranged with the Government." It appears, therefore, that in this case the Company acted as a secret agency for making a political payment for which the Government did not wish to be publicly responsible.

A. 582-601

A. 592-99.

53. Annual payments for the like purposes were made to an English writer named Statham, and were dealt with in like manner in the Company's books. Loans were made at the instance of the Government to E. Mendelssohn, the editor of the "Standard and Diggers' Newspaper." Advances of money were also made by the Company to Mr. Smit, the Government railway commissioner, part of which had not been repaid at the date of our inquiry. These transactions require no comment. Except the last-mentioned loan, which was on other grounds highly improper, they all indicate that the Company used its funds for a purpose quite outside the ordinary business of a railway—namely, the support of writers who undertook to influence public opinion in the way desired by the Boer Government.

A. 608.

A. 602-70.

A. 614.

Conclusions.

54. Such being the recent record of the Netherlands South African Railway Company, we entertain no doubt that, even were not a monopoly of this nature and character injurious, in whosoever's hands, to the public interest, yet, in any case, this monopoly held by this foreign Company is injurious. We are, therefore, of opinion that the Concession should be cancelled, and that the Company should be deprived of the possession and management of the railway. Obviously the main routes of communication in a conquered territory cannot be left under the control of those who, without being obliged to do so, and in breach of their neutrality have, outside their business as a railway company, assisted in making war upon the conquering State.

55. It is, as we have already pointed out, the general rule that when a concession is cancelled, not on the ground of invalidity in the original grant or breach of terms, but on that of injury to the public interest, there arises a claim for compensation. It remains to consider whether this rule applies in any, and if so in what degree, to the case of the Netherlands South African Railway. We submit the following observations with regard to this question :

56. We have seen that the operations of the company against the British before and during the war were acts of aggression, redress for which, as

* In this connection fruitful comparison may be made with the case of the Pretoria-Pietersburg Railway, where a like clause was applied in a very different spirit (see post Report on Pietersburg Railway, paragraph 7).

it cannot be sought against the person, may justly be exacted against the property of the aggressor.

57. In order to obtain guidance as to the nature and extent of this redress, we have made careful search, and though we have been unable to find any exact parallel to the action of the Netherlands Railway Company in the case of land carriers, the principles applicable to the question have been elucidated by judicial consideration of, and decision upon, similar acts of carriers by sea.

58. In the case of ordinary contraband trade at sea the contraband goods are confiscated, but the neutral vessel carrying them usually suffers no further penalty at the hands of the belligerent captor than loss of time and freight. On the other hand, in the case of the carriage of despatches or belligerent persons by neutral ships, the despatches are seized, the persons are made prisoners of war, and the ship carrying them is confiscated.* The principle on which this difference of treatment is based is that, in the first case, the association of the neutral shipowner with the belligerent being in the ordinary way of trade, is presumed to be accidental and almost involuntary, and no measures are therefore taken against him beyond those necessary to intercept the goods; in the second case the circumstances create a reasonable presumption that the neutral shipowner intended to aid one belligerent in the war, and the imposition of a penalty—the confiscation of the whole of the captured property—as punishment for a wrong is at once justified.

59. In our opinion these principles are applicable to the case of land carriers who have acted as the Netherlands Railway Company have done. If the Company, situated as it was in the enemy's country, had confined itself to the ordinary business of carriers and had openly conveyed Boer troops and munitions of war, the property of the company would it is true have acquired "enemy" character, and the British would have been entitled to seize it, but would be bound at the conclusion of the war to restore to the Company at any rate its immoveable property. The Company however, in fact, by destroying bridges, making and repairing artillery and explosives, &c., &c., did acts entirely outside the business of carriers and did them not in obedience to lawful patriotic duty, nor at the summons of a State to whom it owed a subject's allegiance, but voluntarily, and of its own motion and suggestion.

60. The company, moreover, did not act openly as an avowed belligerent. Having itself invited, and even urged, the Transvaal Government to exercise a coercion upon its action which was merely colourable, the Company intended, in the event of disaster, to assume the character of a victim of superior force and claim the immunity of a neutral. It is right, and in conformity with principle, that such conduct should entail more serious consequences than would the open hostility of the subjects of a belligerent.

61. For reasons of public policy, it is of cardinal importance that the line between belligerency and neutrality should be clear and definite. Neutral persons and *d fortiori* powerful corporations having their head-quarters and allegiance in neutral countries, should not be allowed to reap those advantages which are the reward of willing and effective belligerency on behalf of a State, if it be victorious, and yet secure the immunities which are the reward of genuine neutrality if it be defeated. Belligerents cannot be permitted to assume the character of neutrals at their convenience, or to claim the privileges of one class without permanently losing those of the other. A distinct election must be made, once and for all, for no one can be allowed to be a winner in either event.

Case of the Ordinary Shareholders.

62. Applying these principles to this case we are brought to the conclusion that, if the matter is to be dealt with in accordance with international law, the ordinary shareholders of the Company are not entitled to any compen-

* Ortolan, Dip. de la Mer, II., p. 234; Heffter, s. 16, and Hall, International Law, 4th Ed. p. 703.

sation for the loss of their property in the railway. For the shareholders are the proprietors of the Company; they elect and may dismiss managers, directors, and commissioners; they can attend general meetings, and demand information as to what is being done; they can control the administration and have the strongest motives for so doing, for they benefit by the success and lose by the failure of a policy. Plainly they are legally responsible to third parties damaged by the action of the Company. The legal right of the captor to confiscate the property of the shareholders or proprietors of the company appears therefore well founded.

Evidence, 21st Day, and *see* D. 12.

63. Representations were, however, made to us at a sitting held in London on the 13th February, 1901, by Baron von Eckhardstein, the Secretary of the German Embassy, and Count Berchthold of the Austro-Hungarian Embassy on behalf of a large number of German and Austrian shareholders. Baron Von Eckhardstein stated that these shareholders desired to dissociate themselves entirely from the Company and its Directorate, and to ask for consideration at the hands of His Majesty's Government on the following grounds, founded on facts of which, he said, strict proof could be furnished at a later stage if required:—

1. The shareholders in question, it was alleged, hold 6,836 shares registered by the "Schutzcomite" of Berlin, out of a total of 14,000 shares of the Company.

2. The Schutzcomite was, it was alleged, formed at the suggestion of the German Government. It was a committee composed of men of high financial standing in Berlin, who investigated the circumstances of each purchase of shares, and registration of a share was granted only when the Committee was satisfied that the purchase was *bonâ fide*, and had been made before the late Transvaal Government attempted to dispose of its shares on continental markets.

3. The expedient of registration had, it was claimed, rendered an important service to His Majesty's Government by effectively closing the German and Austrian stock markets against sales of their shares by the late Transvaal Government, and by facilitating the tracing of the owners of shares who had acquired them as *bonâ-fide* investments and not as speculators.

4. The shares had for some years previously to the war been quoted at an average price of 130 per cent. premium, and the expropriation clause of the Concession already set out (paragraph 7) was mentioned as containing the terms on which the late Government, and therefore the British Government, should buy them.

5. It was lastly alleged that the shareholders in question bought as investors, and not as speculators in a concern, in which misbehaviour such as has been proved could not reasonably have been anticipated or practically controlled by them.

64. Similar representations were made in writing after the close of our public enquiry by Committees respectively constituted in Paris and Amsterdam on behalf of French and Dutch shareholders. The case of the French and Dutch Committees was in substance identical with that already set forth on behalf of the German Schutzcomite with this exception, that it was not claimed by the French Committee that they had registered the shares after investigation of the circumstance of their purchase.

65. In the absence of proof of the facts on which these requests of the Committees depend, we can offer no other observations than as follows:—

(*a.*) If the Concession is forfeited, the expropriation clause, which is based on the right of the proprietors of the railway to be bought out as if it were a going concern, falls with it.

(*b.*) The belligerent acts described above, for which—as we have already pointed out—all the shareholders are legally responsible, have caused immense damage to His Majesty's Government, as well as to the Governments of Natal and the Cape Colony.

(c.) It is of course open to His Majesty's Government, as an act of grace, to show some consideration to shareholders who may be able to establish hereafter their innocence, but it appears to us to be just that this consideration should be postponed till His Majesty's Government are satisfied that such shareholders have exhausted the remedies open to them against their own Directors, and till the damage done by the wrongful acts of the Company has been made good.

66. It is clear that, in any case, the number of shares in respect of which a title to consideration on the above grounds may be established cannot exceed 8,287 (14,000 less 5,713, the holding of the Government of the late Republic), and no payment should be made in respect of any share held by a Director or Commissioner of the Company since hostilities commenced. The German and Austrian Schutzcomite, the first to be formed, was not constituted until November, 1900, long after the war had begun, and in the interval the late Government had the opportunity of disposing of their holdings. Of this opportunity they apparently availed themselves, for the German and Dutch Committees claim to have established rights in respect of, in all, 8,699 shares, which, deducted from the total 14,000 shares of the Company, leave a balance of 5,301 only, or 412 less than the 5,713 of the Transvaal Government. In this calculation no allowance is made for bona fide French investors, and we have been officially informed by the authorities of the French Embassy that the number of shares represented by the French Committes is 4,695. The grand total held by the three Committees, aggregates therefore 13,394 shares out of the total of 14,000, so that it would seem that the Transvaal Government out of its holding of 5,713, disposed of all but 606. D. 12, and Evidence 21st day. D. 12. D. 12.

It must be confessed that this circumstance suggests a doubt of the efficacy of the well-intentioned efforts of the foreign Committees to render an important service to His Majesty's Government by effectively closing the stock markets against sales of their shares by the late Transvaal Government.

Case of the Debenture Holders.

67. It will be seen on reference to paragraphs 16 and 18 of this Report that much the larger part of the capital of this Company was raised by the issue of debenture bonds, of which the interest and principal was directly guaranteed by the Transvaal Government. The debenture holders are creditors of the Company, their rate of interest is fixed, and does not vary with the fortunes of the Company; they have no control over the policy and administration of the Company, nor does any proof exist that they were in any way privy to the belligerency of the Company. Their security has indeed been depreciated by the action of the Company to whom they lent their money, and, if His Majesty's Government think fit to recognise the obligation of their predecessors in the Transvaal towards the bondholders, this depreciation may, we think, be taken into account as well as the higher value with which British credit will invest the bonds. Subject to these observations, we can find nothing which disentitles the debenture bondholders to full recognition, and we recommend them to the favourable consideration of His Majesty's Government.

SELATI RAILWAY.

History of the Grant.

D. 1, page 3. * 1. In June 1890, Eugène, the younger of the Barons Oppenheim, "dont le nom," they write, "était connu dans la finance," arrived in Pretoria with the avowed object of acquiring concessions.

2. The Baron had a most flattering reception. Not only did the Pretoria press take notice of him, he was frequently received by President Kruger, D. 1, page to whom he made known the object of his journey, and the President did not conceal his readiness to meet his visitor's wishes. By a fortunate D. 22. coincidence there was awaiting discussion by the Volksraad, among other schemes, a project for the construction of a railway to the undeveloped gold fields of Selati. "Le chemin de fer," write the Barons at a later "date, "traverse un pays absolument desert, et le plus malsain de D. 1, page 52. "l'Afrique du sud. Les mots absolument desert ne sont pas pris au "figuré, on n'y rencontre pas un seul habitant." There had been more than D. 1, page 4 one applicant for the privilege of executing this promising work, but the petition of Messrs. Vorster, Porcheron and Stephenson, of whom the first was a member of the Raad, in whom President Kruger took a friendly interest, was that favoured by the Government and debated by the Assembly D. 1, page 6. A draft Concession was laid before that body, and on the 25th July, 1890, ordered to be published, but the decision as to its acceptance was postponed until the annual prorogation should have enabled the members in accordance D. 22. with constitutional practice to consult their constituents.

3. The reversion of the Concession had, even before this date, been offered to the Baron, for, on the 27th June, 1890, he addressed a telegram to his elder brother in Paris in the following terms :—

"27th June, 1890.

D. 1, page 4. "Espère obtenir concession chemin de fer...environ mille miles et deux miles terrains miniers chaque côté...garantie Etat 3 per cent. Je dois donner President Kruger £4,000—sur signature concession. Le concessionnaire demande £80,000 quand Compagnie sera formée et £125,000 en actions sur capital versé, splendides conditions, grâce à moi, faut pas hésiter un instant, merveilleuse affaire, répondez acceptez, Angleterre et Allemagne demandent cette affaire depuis deux ans President Kruger veut que ce soit moi. Es-tu content ?...option neuf mois £15,000 . . . ."

4. But Baron Robert, in the cooler atmosphere of Europe, seems to have hesitated to provide the option money from the common chest, for the D. 1, page younger brother was compelled to draw "£6,500 de mon argent personnel pour pot de vin." He was at that time lavishing large sums of money by way of commissions to the principal members of the Executive Council and of the Legislative Assembly with a view to obtain the provisional Concession. He gave away, through Vorster, American D. 1, page 9. carriages and watches to the Volksraad: he paid £300 for the portrait in oils of President Kruger, now hanging in the Chamber of the First Raad

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A. 3648-9-50. * In the preparation of the history of this Concession, and of the operations under it, use has been made of the defence printed and privately circulated by the Barons Oppenheim, in 1896, and communicated to us on the part of the Company. The statements in this interesting and amusing pamphlet are in their main lines corroborated by the judgment of the Belgian Court of Appeal (later on referred to) and by documentary and other evidence placed before us, and referred to in the margin of the report, but the allegations as to the particular individuals who received commissions from Baron Eugène (their names have been generally kept out of this paper) should, unless so corroborated, be accepted only as evidence against the person who gave them and his partners in interest.

The gist of the Barons' defence, it may be worth while to observe, was that it must have been obvious to the Transvaal Government that "les sacrifices énormes que nous (the Barons) devions faire pour arriver à nous assurer la dite concession," were not incurred without the confident expectation of "le bénéfice considérable sur lequel nous étions en droit de compter," and that if President Kruger and his advisers took advantage of the youth and innocence of Baron Eugène to foist on him in return for his money a valueless privilege, it did not lie in their mouths to complain that, at a later date, he took his profit as he was able to find it.

at Pretoria, and he gave a great dinner at the Transvaal hotel. Besides these expenses, a further sum of £8,700 was claimed by Vorster and his friends as having been expended during 1890, in connection with their petition for the Concession and was paid by the Barons, who at a later date, after the floating of the Company, recouped themselves from its funds in the sum of 368,000 francs under the heading "Formation Expenses," on account of telegrams and "many douceurs distributed to people in Africa to interest them in the enterprise." D. 7. D. 20.

5. Pending the final sanction of the scheme by the Raad at its ensuing session, Baron Eugène on the 5th August and again in October, 1890, entered into notarial agreements with Vorster, Porcheron, and Stephenson for the purchase of the Concession. These agreements, which are stated by the Oppenheims to have been communicated to the Executive Council, secured to Vorster and his associates one-twentieth of the share capital (£2,000,000) of the proposed railway, plus £80,000 in cash, Vorster & Co. on their part covenanting in refund of the £8,700 which Baron Eugène had made good to them to hand back to the latter £15,000 in shares. But, when at the ensuing session of the Volksraad the draft Concession came up for consideration, it was not at once accepted as it stood, but was referred for revision to a Committee, at which the interests of the Baron, who had returned to Europe, were represented by one Roth. D. 1, page 11. D. 8. D. 22.

6. Along with the draft scheme laid before the Committee there was a survey of the proposed line from Komati Poort to Selati by Messrs. Bechtle and Marais, made at the cost of the Oppenheims, and there were not included any extensions beyond Selati or any grants of land along the line. And the possible advantages anticipated by the Barons when first negotiating for the Concession were not only diminished by this reduction of its scope, but when the draft left the hands of the revisers its financial clauses had suffered changes further compromising the prospects of profit. Both parties to the bargain, who were of course aware of the Committee's amendments, seem to have thought that their gains would be reduced, for on the 6th July, 1891, nine days before the draft was approved by the Raad, they entered into a fresh notarial agreement, superseding the contracts of 1890, whereby the price was reduced from £80,000 cash to £30,000 cash, plus a profit contingent on Vorster's being able to procure from the Raad a further amendment of the Concession. The parties in their contract refer to this contingent profit, as follows:—"In addition, the Concessionaires will do "their best to obtain from the Parliament its consent to 10,000 shares being "handed to the Concessionaires for the transfer, and that these shares shall "be equally divided, half for the Baron Oppenheim, and half for the "Concessionaires." This was apparently thought necessary, because the amended draft of the Concession had limited the sale price to £10,000, and the financial genius of the Baron not having yet evolved the simple and brilliant expedient by which in the end four-fifths of the share capital of the Company were diverted before a sod of the railway was turned into the promoters' pockets, the parties were temporarily at a loss where to find their advantage; but Vorster did not succeed in making the desired alteration, if indeed he ever made the endeavour, and the scheme was laid before the Assembly, and, on the 15th July, 1891, adopted in the form in which it left the Committee. On the 25th of the same month a contract embodying its terms was concluded between the State Secretary and Vorster and his associates. D. 1, page 12. D. 1, pages 14, 15, 16. D. 8. D. 3. D. 2, c. 1, D. 22. D. 3.

7. While the Contract was under the Committee's consideration Baron Eugène Oppenheim had been summoned back to Pretoria by President Kruger, and the brothers assert that, at a meeting including some only of the Volksraad Committee, held at the President's house and in his presence, it was formally agreed between their agent Roth and those present that the wording of the amended Contract under which the Concession was to pass free of charge to the proposed Company, and to which the Barons took exception as depriving them of their chance of profit, should be treated merely as a blind, and that they should make their advantage out of the cost of construction. D. 1, page 17. D. 1, pages 18 and 19.

D. 1, pages 21, 22 and 23.

8. It is not a little surprising that Baron Eugène should have thought it prudent to accept a privilege founded on so precarious a title, but if he is to be believed he not only did so, but paid heavily for it. He avers that he spent on the confirmation of the Contract £8,498, in sums varying from £50 to £3,000, as bribes to prominent politicians, besides promising shares to the value of £14,000 more; and he particularises the scrip assigned to the Vice-President of the Republic, to a Member of the Executive Council, and to Mr. Eloff, President Kruger's son-in-law.* He complains somewhat plaintively that Members of the Transvaal Parliament, who were not paid, had no hesitation in asking, and he quotes at length a letter from the local Attorney-General, who was not ashamed to plead a temporary embarrassment and to beg for £200.

9. There is in our opinion no doubt that the nature of the negotiation between Vorster and Baron Eugène Oppenheim was within the knowledge of the President of the Republic and of his advisers of the Executive Council, and it is important that it should be realised what this means. No valid concession for the construction of a railway could be conferred on anybody save by authority of the Volksraad. That Assembly decided in the interests of the Revenue and of the Taxpayers whom they represented to make it a condition of their assent, involving be it remembered a State guarantee of the capital expenditure, that the limit of profit to the grantees of the Concession, Vorster, Porcheron and Stephenson, should be £10,000, and clearly provided accordingly. But Baron Eugène covenanted to give them cash to the amount of not less than £30,000 as well as other advantages—though he could not, and the Executive Government of the Transvaal knew he could not, pay the excess if he honestly stood to the conditions of the grant. Besides, no sooner had Baron Eugène entered into possession of his Concession than Vorster and Co., acting through Porcheron, commenced a dispute about the division of the spoil, which had to be referred to Pretoria for settlement; the Government then decided in favour of the Oppenheims, hinting, however, a desire that Porcheron's share should be augmented, and at a later date the purchasers of the Concession found it necessary to shut the mouths of this person and his associates by admitting them to a larger share in the profit.

D. 2. ch. 6.

10. The point is important in connection with the disputes that arose at a later time between the Company and the Government as indicating that the latter—the Government, not the Raad—did not intend that the £10,000, fixed by the Assembly as the benefit to the Concessionaires, should honestly be respected as a limit, and it is not surprising that the Baron should argue, as he did at a later date argue, that if he broke the terms of his concession the Transvaal Government was accessory before the fact to the breach.

Terms of the Concession.

D. 3.

11. The Concession, dated 25th July 1891, is set out at length in the papers. It authorised the formation of a limited Company, with head quarters in Paris, the wish of the Government explicitly stated being to introduce French capital, and to deal with French financiers; but from that place a change to Brussels was made, with the sanction of the Government, when the Company came to be formed, apparently for reasons having their origin in the strictness of French Company law; and ultimately, as will appear, the Company had to have recourse to London to obtain funds, and very nearly all the money actually invested in the construction of the line was raised in England.

D. 11.

D. 12.

A 3279 to A 3310

12. The business of the Company was to be the construction of a railway from somewhere near the place where the Netherlands Company's line crosses the Portuguese border to a point in Selati Goldfields, neither spot being exactly fixed. The work of construction was to be begun within nine months of the grant of the Concession, and the railway was to be finished as far as Leydsdorp, a little town near the goldfields, within three years.

* Cf. paragraph 2 of footnote to paragraph 1 of this Report.

The Government guaranteed 4 per cent. on the cost of the construction and of the formation of the Company, and the usual provisions were made for supervision, for the fixing of tariffs, for the working of the line when open, and for its expropriation by the Government.

13. The Company had to deposit £20,000 by way of caution money, forfeitable in certain eventualities to the State, and it bound itself to make advances to the Government to enable it to meet the latter's guarantees during construction, if it were in funds to do so. If after the fixed charges, including reserve fund, had been covered, the profits of the Company left a surplus, the Government and the Company were to share that surplus equally.

14. To facilitate its dealings with the Company in Europe, the Government was to appoint an agent of its own, by the title of Commissioner, to represent it on the local administration there. This important office was filled by Mr. Beelaerts Van Blokland, the representative of the Transvaal Government at the Hague. D. 12

All disputes arising out of the Concession were to be settled by arbitration.

15. At a later date the caution money was deposited with Messrs. Labouchere Oyens & Co., in Amsterdam, where it still remains. D. 20. A. 3177.

16. The scheme as actually adopted by the Raad differs from the draft submitted by the concessionaires principally in its financial conditions, the most material parts of which are subjoined in parallel columns.

Original Draft.	Approved Scheme.
Article 25. The Concessionaires, their representatives, trustees, administrators and successors (those having the power to do or cause to be done all that may be found necessary to complete or cause to be completed said Railway in a proper manner in terms hereof) bind themselves to float a Company within eighteen months after this concession shall have been granted and published in the Government Gazette (Staats Courant). This Company shall have a capital in shares of at least two million pounds sterling (£2,000,000). The Company in consultation with the Honourable the Government may, if it appears necessary for the completion, proper working, and maintenance of the railway lines, increase the said sum of £2,000,000 by an issue of shares and Debentures.	25. The "Concessionaires," their representatives, trustees, administrators and successors (who have power to do or cause to be done all those things which will or may be found necessary to properly complete or cause to be completed the Railway herein named according to the terms of this concession) agree to form a Company within nine months after the granting of the concession and the publication thereof in the "Staats Courant." D. 22 D. 3. This Company will, for the construction and the working of the Railway referred to in Art. 1 and everything appertaining thereto, including all costs incidental to its formation, temporary works, administration, the receipt and transmission of money, etc., and a maximum of £10,000 in fully paid-up shares to the "Concessionaires" for the transfer of the concession, have a capital of £500,000 stg. in fully paid-up and in paid shares, the cash payment for which shall be made at par. The Company shall have power to issue debentures from time to time to such amount as may be necessary to complete the Railway referred to in Art. 1 according to the terms of this Agreement, and to work and continue working the same, provided however that the total amount of the Debentures to be issued by the Company shall not exceed the sum of £1,500,000 stg. without the sanction of the Government having been previously obtained.
Guarantee of the Government, 3 per cent.	These debentures will be guaranteed direct to the holders by the South African Republic with an annual interest of 4 per cent. The rate and other conditions of the issue of debentures referred to in this Article will be fixed by the Company after consulting with the Commissioner of the Government who under instructions from the Government shall countersign the documents in proof also that this consultation has taken place and they will be redeemable by the Government at par at any time the Government may think proper. The manner in which these debentures may be issued by the Company will be as follows: (*a*) One-fifth part when 25 miles of the earthworks shall have been completed. (*b*) One-fifth part when the whole of the earth works shall have been completed. (*c*) One-fifth part when the first 50 miles of Railway shall have been laid down. (*d*) One-fifth part when the second 50 miles of Railway shall have been laid down.

Original Draft.	Approved Scheme.
	(*e*) The balance when the Railway shall have been quite completed. Provided however that the cost of construction shall not exceed £9,600 per mile or as much less as the construction shall amount to. Neither may the amount of shares and debentures to be issued exceed the sum of £9,600 stg. effective per mile. 27. The Government of the South African Republic guarantees to the Company an annual minimum dividend of 4 per cent. (four per cent.) on the actually paid up capital of the Company.

17. The substantial effect of the financial clauses of the approved scheme is—

(*a*) To guarantee on behalf of the Government to the Company a minimum dividend of 4 per cent. on the actually paid up capital, fixed at £500,000, in fully paid up shares issued at par.

This capital to be for—

i. The construction and working of the railway.

ii. Costs incidental to the formation of the company.

iii. Temporary works, administration, cost of remittances, etc.

iv. A maximum of £10,000 in fully-paid shares to the Concessionaires for the transfer of the Concession.

(*b*) To guarantee the principal and interest at 4 per cent. of Debentures, not to exceed £1,500,000 without sanction of the Government, issued " to complete the railway and continue working the same."

With two provisos. (1) That the cost of construction shall not exceed £9,600 per mile, *or as much less as the construction shall amount to.* (2) That no more shares and debentures shall be issued than sufficient to provide £9,600 per mile in actual cash.

The meaning of the latter part of the first proviso has been a subject of dispute between the Company and the Transvaal Government.

Operations under the Concession.

18. Since their agreement to buy the Concession, and even before it had been finally confirmed by the Volksraad, the Barons Oppenheim had succeeded in selling it to a French firm—MM. Marc and the Comtes Bondy and Adhémar—on the terms that the latter were to undertake the work and pay the vendors 20,000 fr. per kilomètre. On the 25th June, 1891, this contract was renewed, and a lump sum payment to the Barons of 100,000 fr. added. The French firm had meanwhile provisionally agreed with certain English contractors—Messrs Westwood and Winby—to build the line, and Winby had visited the spot, but the agreement stipulated that payment was to be made in Transvaal debentures, and at that time these securities were not negotiable. It thus became necessary, in order to save the Concession, imperilled by the efflux of the period limited for commencing work, for the Barons to resume control of their undertaking, and the upshot was that the Oppenheims with Adhémar and his friends had to start a small company of eight persons, the number of shares assigned to the Barons being 21,976 out of an available 24,500, there being reserved for the original concessionaires 500 shares of 500 fr. each. The full name of this company was " La Compagnie Franco-Belge du Chemin-de-fer du Nord de la République Sud-Africaine." In the interests of brevity we have referred to it throughout the Report as the Selati Company. It was actually formed on the 22nd February, 1892. But before that stage was reached, there were yet further contracts as to division of profits. On the 20th January, 1892, the Oppenheims and their French friends, Adhémar and others, covenanted for a division of the spoil in the following terms :—

" It is recognised by the parties that by common consent a combination " is to be carried out, in virtue of which the net minimum profit shall be " 12,250,000 fr. in fully paid-up shares," of which 15 per cent. was to go

D. 1, pages 24, 25 and 26.

D. i.

D. 20.

D. 10.

to the Adhémar group. That is to say, the parties agreed to divide among themselves the whole share capital of the Company, £490,000, being the authorised £500,000, less the approved price of the Concession, £10,000. And the Barons Oppenheim a few days later agreed to divide their profits with Vorster, Porcheron, and Stephenson in the proportion of 3 to 1, but before these last were given their share a sum of £100,000 was set aside to meet the preliminary expenses. The distribution thus seems to have been— D. 9.

Adhémar and Cie	£73,500
Vorster and Cie	£79,125 + £10,000 = £89,125
Barons Oppenheim	£237,375
Expenses	£100,000

19. The Barons Oppenheim and their associates had so far realised their profits only in the form of a distribution among themselves of the shares in their own Company; on these they had paid up 10 per cent., and the sum so realised had been expended partly in repayment of the expenses of Baron Eugène on his missions to Pretoria, partly on floating the Company, on the survey of the line, on administration, &c., &c. It still remained to turn the shares into money, and to do this to advantage it was necessary to induce the Transvaal Government to pay at least one instalment of guaranteed dividend, a course of action which could be construed as admitting liability for the future. To this end that Government, which could not reasonably be expected to pay a yearly 4 per cent. on £400,000 for which it had obtained no kind of consideration, must be led to believe that the shares had been fully paid up, and the proceeds spent or awaiting expenditure on railway construction and the other objects sanctioned by the express terms of the Concession. This was done in the following way. The Company, through its Directors, the Oppenheims and Braconnier, entered into a lump sum contract with one Louis Warnant, a brother of Oppenheims' lawyer Henri Warnant, on the 6th September, 1892, to build the line for a total of £1,848,000 (192½ miles at the maximum rate £9,600 named in the Concession). Within three days Warnant sub-let this contract for £1,348,000 to Westwood and Winby, with whom Adhémar et Cie. and Robert Oppenheim had already been in communication, and who, a year earlier, before they knew of M. Louis Warnant, had been willing to build for even less.* The effect of course of this operation was to free the share capital of £500,000 from all charges for construction, and to leave it, subject to the deduction to pay the expenses of floating the Company, at the disposal of the Oppenheims' nominee, Louis Warnant, for division between the accomplices. In actual fact the shares were never paid up, but remained as profit in accordance with their agreement of the 20th January, 1892, in the hands of the subscribers. D. 20. D. 1, page 57. D. 13. D. 14. D. 1, pages 24. 25. A. 3416. D. 20.

20. False entries were then made in the books of the Company, showing on one side of the account the receipt by the Company of the 10,000,000 francs of share capital which actually had not been subscribed, and on the other a payment out, of an equal sum, to M. Louis Warnant under the head of "Works in Progress." This falsification of the books formed the basis of the criminal charge preferred at a later date against the Directors of the Company at the suggestion of the Transvaal Government.

Westerman's Report and the Warnant Lump Sum Contract.

21. The next step was to furnish accounts to the Government of the expenditure on the Railway up to the 31st December, 1893, based on the agreement with Warnant, and to claim payment of the guaranteed dividend. These accounts were submitted to an auditor named Westerman appointed by the Transvaal authorities, who examined the Company's books in Brussels and made a report. It is alleged on behalf of the Company that this report was favourable to them, and that on the footing of it the Government approved their balance sheet, but this is not a candid statement of the facts. A. 3744 to 3756. D. 15, D 20. D. 20.

* The nominal total was higher, but was subject to deductions for which provision was not made in the later contract.

The balance sheet showed* as expended under "works in progress" a sum of 15,249,999 francs 90 centimes, £610,000, but Westerman at once noticed that £400,000 of this had gone into Warnant's pocket, and had not been expended on railway construction at all, and he asked for an explanation. He was given a copy of the Warnant Contract, but was not satisfied until he was told that a duplicate of it had been supplied to Mr. Beelaerts Van Blokland, the Minister at the Hague of the Transvaal Government and the agent appointed by it to watch its interests in the Railway, and he reported the whole of the circumstances to the Railway Commissioner in Pretoria. A correct account of his report, which is dated Amsterdam, the 27th March, 1894, would describe it as having passed the balance sheet, on the footing of the acceptance by his Government of the Warnant contract; and information of its contents could scarcely have reached Pretoria when, on
A. 3142. the 25th April, 1894, Mr. Smit, the Commissioner of Railways for the Republic, made further inquiry from Westerman about the missing 10,000,000 francs, while on the 12th June, 1894, in reply to a proposal on the Company's part, preferred in the preceding April, for an issue of £1,000,000 Debentures,
D. 16. the State Secretary, Dr. Leyds, took formal objection to the Contract itself in a letter addressed to the Local Board of Directors at Pretoria, declaring that the Government declined to recognise it, and desired to abide by Article 25 of the Concession.

22. He expressly stated that the Government's knowledge of Warnant's contract came from Westerman's enquiry, and added that the Government was "surprised and disappointed to see that several douceurs amounting to a considerable sum have been given for the purpose of furthering the enterprise," referring to the money distributed by the Baron Eugène in
D. 20. Pretoria, and which appeared in the Company's accounts as refunded from the proceeds of the shares.

23. When it is remembered that the first defence of the Company to the accountant's objection against the Warnant contract was that it had been communicated to the agent of the Government at the Hague, Mr. Van Blokland, it becomes worth while to examine the precise terms of the justifications afterwards put forward on behalf of the directors.

24. The Barons Oppenheim, in their printed defence of 1896, say no more in this connection than that the Warnant Contract was entered on the
D. 1, page 36. minutes of the Company, *which had never refused to show them to Mr. Van Blokland or to anybody else* (the italics are theirs), adding that this gentleman was always summoned to the meetings, and that if he had chosen to attend he would have seen Warnant's contract, its cession to Westwood and Winby, and the entry of £400,000 in the books.

D. 16. 25. In the correspondence of 1894 between the Government and the Company's local directors in Pretoria, arising out of the accountant's report, the statement as to communication to Mr. Van Blokland was not repeated, and in the elaborate and carefully reasoned answer addressed from Paris,
D. 18. 3rd May 1895, by Mr. Evan Thomas (a director of the Company) on behalf of Baron Robert to Mr. Smit, the Railway Commissioner, no more is said than that "le Gouvernement a toujours pu connaître ce contrat, etc." It is a reasonable inference that the original statement made to the accountant
D. 2, ch. 1. went beyond the facts, though it may not be possible to acquit Mr. Van Blokland, who it is stated was summoned to every Board meeting, but never attended one, of neglecting his duty.

A. 3387-9. 26. The Government, however, while the dispute was proceeding, paid the Company the dividend on the share capital falling due in July, to the
D. 2, ch. 2. end of 1893, perhaps in contemplation of the Debenture issue planned for the middle of August, which a refusal to pay must have gravely prejudiced, and in the success of which some interest was felt at the capital.

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* It was suggested on behalf of the Company that this balance sheet was actually prepared by Westerman: that it was not theirs, but his. The Barons Oppenheim, who must have known, write "ce bilan est dressé par nous . . ." D. 1, page 40.

The Debenture Issues.

27. A nominal £500,000 in Debentures had been issued in February 1893, and the proceeds, some £350,000, constituted the only capital that the Company had so far really had to work upon. The Bonds were issued by the Railway Share Trust Company at £77 per £100, of which £70 only went into the coffers of the Railway Company, the charges of underwriting, commission, &c., being at the excessive rate of £7 per bond. The Oppenheims were interested in the underwriting to the amount of 42 per cent., and they and the others concerned seem to have obtained a kind of promise from the issuing house that they would be allowed to make an equally good bargain over the next and larger issue. D. 2, ch. 3 D. 5 A. 3135.

28. This second issue was to be a nominal £1,000,000, and was arranged for August 1894. The price to the public was £93 10s., but the Transvaal Government was to get £86 only, the cost of issue and of underwriting having risen a half per cent. in spite of the improvement in the credit of the Government evidenced by the increased price of issue. D. 2, ch. 3.

29. But the fact was that Vorster retained an interest in the profits of Debenture issues, or at least of the first issue,* and that he had a very influential friend in the Transvaal Government, as the following letters will show :— A. 3169. D. 2, ch. 6.

[TRANSLATION.]

"LEGATION OF THE SOUTH AFRICAN REPUBLIC,
"THE HAGUE, *2nd February*, 1892.

'MONSIEUR LE BARON,

"On my return after an absence of a week, I find the documents which you have been good enough to send by your letter of 27th January.

"While thanking you for sending the contracts, I regret not hearing from you at the same time of the formation of the Company. According to the information I have received from Pretoria, I urge you to hasten this business as much as possible.

"If you are able to find means of coming to an understanding with Mr. Porcheron†, I believe that it would not be disagreeable to the Government.

"I am, &c.,
"(Signed) BEELAERTS VAN BLOKLAND."

[TRANSLATION.]

"*3rd December*, 1892.

"MONSIEUR LE PRESIDENT,

"Last Monday Mr. B. J. Vorster came to see me at my office and strongly desired to take me to the President to introduce me to him. I refused, saying that I was acquainted with him. On Tuesday I went to the President with Mr. de Jongh to try and get the matter of the debentures passed before he left. Mr. de Jongh will tell you that we failed, but that the President promised us to resume the discussion of your proposals directly after his return, and that of General Joubert, that is to say about the 27th or 28th December. The President then made me a pretty warm speech about Mr. Vorster, saying that it was through him and on his account that the matter of the concession of our railway had been decided and resolved; that Mr. Vorster found himself at this moment in need of money, and that he asked us to do our utmost to help him and not to forget the services rendered by him. I replied to the President that we were always very desirous of being agreeable to him, and that I promised him that everything that could be done should be done with that object, and that I was going to write to you upon this subject.

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* It is denied that he had in the second issue, though the terms of his agreement with the Oppenheims would appear to cover a claim to participate.

† Vorster's partner.

"Wednesday morning Mr. Vorster came to see me again; he explained to me that he found himself obliged to repay the sums that he had borrowed to cover the expenses necessitated by the obtaining of the Concession of our Railway; that he had, by contract, the right to 6 per cent. of the profit of the sale of the Debentures of the Company, and that he was going to ask you to advance him a sum upon his rights. He asked me to transmit this demand to you and to ask for a reply by cable. You will find his letter enclosed.

"As it is indispensable, for reasons that you will appreciate, to be careful of the good intentions of the President towards us, I did not see my way to refuse this request.

"If, as I suppose, you will not think fit to agree to it, I take the liberty of asking you to do it with circumspection—to use rather methods of delay than to meet it with a direct refusal; and not to forget that the friendship of the President, which we have now gained, ought to be retained in the interest of the Company of course, and of its future; and, also, that the President seems to take in hand the cause of Mr. Vorster in a very special and personal way.

"I hope to leave for Komati Poort next Tuesday. I don't think my presence there is required for more than three or four days. Since I cannot follow the line further than the Crocodile River, it would be impossible to find there in this season means of transport; horses and oxen die there of sickness and the fly. But as the journey itself, going and coming, takes eight days, it is likely I shall not be able to write to you by the next mail.

"I am, &c., &c.,
"(Signed) VAN DEN BOGAERDE.*

"To Monsieur le President
of the Board of Directors, Paris."

D 2, ch. 3. 30. These two Debenture issues realised net to the coffers of the Railway Company £1,210,000. The former issue was assented to by the Government as a matter of course, but before agreeing to the emission of the second, terms were imposed by the Government and agreed to by the Company. These were the result of an acrimonious
D. 16. correspondence, turning mainly on the Warnant contract, the upshot of which, it is alleged by the Company, was the withdrawal on conditions of the objection on that ground. We do not agree in that view of the Government's decision, which took the form of an Executive Council Resolution, dated the 31st July, 1894, communicated by telegram to Mr. Van Blokland, wherein it was stipulated among other conditions "that guarantee be given that all sums which cannot be reasonably debited against the Company shall be refunded," a condition interpreted by the Company as limited to the refund of the moneys expended on bribery in Pretoria. We find† no adequate ground for that limitation.

D. 19. 31. The desired guarantee was given by Baron Robert Von Oppenheim, the Chairman of the Company, and the issue of the Debentures was successful.
A. 315 The terms were such that those interested in the issue profited greatly, but it must have been clear to all concerned that the controversy over Warnant's contract was such as to seriously jeopardise the interests of the owners of shares still held mainly by the Oppenheims and their entourage, and that the question of their sale had become a pressing one. This process was skilfully and successfully effected early in 1895, before the Warnant dispute had led to an open rupture with the Government and before another dividend on the shares became due, but, in the meantime, another difficulty had arisen.

The Difficulties as to Route.

D. 20. 32. In 1892, Messrs. Westwood and Winby had begun the construction of the railway. To enable them to do this they had to borrow of the

* Baron Van den Bogaerde was Chief Engineer of the Selati Company.
† The Brussels Court of Appeal arrived, independently, at the same opinion. D. iii.

Company 875,000 fr. at 5 per cent., and during the construction they were financed to a large extent by a Mr. Toleman and by two English companies —the Mercantile Development Company and the Railway Share Trust and Agency Company—who were respectively the means of introducing the shares and the debentures to the London Stock Exchange. A. 3723.

33. By May, 1894, there had been laid fifty miles of rails, and within the same year the line, except for a big bridge over the Sabi River, was completed or nearly so, to the length of seventy-four miles, and large quantities of rails and other materials had been ordered or actually supplied, when work was stopped by differences between the Government and the Company regarding the direction of the route of the line. A. 3178. A. 3225 to 32.

34. These differences had their origin in the summer of 1894. The survey by Bechtle and Marais, for which the Company had paid 100,000 fr., was found by the Engineer of the Company and the Contractors to lay down a trace so difficult and costly that it became necessary to deflect the route to the west. The Government Railway Commissioner, Mr. Smit, approved this alteration up to the 119th kilomètre from Komati Poort, but his wrath and suspicions having been aroused by the discovery of the Warnant Contract, he arrived at the opinion that the direction of the line had been changed for the purpose of lengthening it in the Contractor's interest, and not only refused to approve plans beyond the 119th kilomètre, but went so far as to require that a section of the length already constructed on a line approved by himself should be pulled up and relaid. A re-examination was made of the country and of the old trace, and every endeavour tried to compass a settlement, but no agreement was ever arrived at. D. 2, ch. 5. D. viii.

Sale of the Shares in London.

35. Thus in the autumn of 1894 matters were not going well with the Company. The dispute about the Warnant Contract had not been settled, and the management of the Company had been made the subject of an inquiry by a Commission of the Volksraad, whose report was strongly adverse to the Company's administration. The construction of the line had been stopped, and to this there had been added a fourth difficulty, for the original concessionaires, probably scenting mischief to the Company in the Transvaal, were pestering the Barons to take over a block of 1,786 shares, seemingly the unrealised balance of their spoil, and the Barons found a difficulty in providing the funds for so doing. Ultimately, however, they took over one-third of the block themselves, and induced the Railway Share Trust and Agency Company, Limited, and two of that Company's Directors to take together a second one-third, while Mr. Evan Thomas, Chairman of the Mercantile Development Company, assumed the burthen of the remainder. Thereupon sprang up proposals for the general sale on the London Stock Exchange of the shares of the Company, which it must be remembered had never yet been placed on any market. For this purpose Baron Robert, the president of the railway, desired to make use of the services of the Mercantile Development Company, dealing through Mr. Evan Thomas, whose knowledge of the French language enabled him to transact business readily with foreigners, and who had had relations on behalf of his own Company, as had also Mr. Macrae of the Railway Share Trust, both with the railway company and with the contractors, extending from 1892. It was arranged that Mr. Evan Thomas should become a Director, and he joined the Board, of which the Barons Oppenheim and M. Carl Braconnier were the other members, in February 1895. He attended his first Board Meeting in March. Mr. Evan Thomas was acquainted with the circumstances of the dispute about the Warnant Contract, but stated that he was unaware, and the Baron did not think it prudent to tell him, of the differences about the route. It became necessary before the sale could proceed that he and his co-directors of the Development Company should be convinced that the Warnant contract had been accepted by the Government of the South African Republic, and he and his solicitor were given access to some of the correspondence and papers on the subject; in the course of their inquiry they called upon D. 17. Evidence 20th day. A. 3484. A. 3370. A. 3529, 3530. A. 3487. A. 3878.

A. 3897-8-9. Baron Robert to provide them with a report of the Railway Commissioner of the Transvaal to which reference was made as setting out the relations subsisting between the Government and the Company. A correct copy of this report in the shape in which it was laid before the Volksraad was placed before us; it contains two references to the continuance of the Warnant dispute, and would have constituted a clear warning to the Barons' London friends that the Transvaal Government had not accepted the explanations offered to it. But Baron Robert enclosed to them, certified under his own hand, an incomplete version of this document, omitting these material parts; and, with this before them, they accepted the view that the dispute was at an end. Before the prospectus of the sale of the shares was issued, Mr. Evan Thomas became aware that a report of
D. 17. the Commission of the Volksraad, dated 10th September 1894, indicated that that assembly was not at one with the view he had accepted as that of the Executive Government, and he would no doubt have acted more prudently had he, when so informed, made further inquiry; but men of business are not expected to be acquainted with difficult constitutional problems having their origin in distant lands; he preferred to abide by the opinion he had already formed and to rely solely on the Government;
A. 3689. and he showed his own faith in its correctness by embarking money of his
A. 3901-3913. own and of his personal friends in this particular investment, and by
A. 3900. refusing fairly advantageous terms of purchase afterwards from the Transvaal Government.

36. There were certain technical difficulties in the way of selling the shares in England. They were shares to bearer, but every bearer was
D. i., part ix. required by the Articles of Association of the Company to have a domicile in Belgium. They were not in a continuous sequence of numbers, a defect which would prevent their being assigned a quotation on the London Stock Exchange. Besides, the Mercantile Development Company made it a condition of their assistance that there should be placed at their disposal a
A. 3613. sufficient body of shares to transfer the control of the Company from foreign into English hands.

37. The Mercantile Development Company and Railway Share Trust
D. 23. Company and those associated with them having 1,200 and odd shares, the Barons Oppenheim provided from the mass over which they had control enough to make a round number of 15,000; these were handed over to the Mercantile Development Company. A prospectus was issued offering
D. 6. for sale "Bearer Certificates relating to 15,000 shares to Bearer" in the Selati Company, and explaining that the shares would be held in trust for the Certificate holders by two Trustees who could provide them with the indispensable address in Brussels, and the necessary sequence of numbers, but unfortunately omitting to mention that the shares so offered consisted, almost entirely, of the holdings of the four Directors of the Company, and making no reference to the claim of the Transvaal Government against the Company, still unsettled, of £400,000. The prospectus did not give the name of the issuing house, nor make any allusion to the stoppage of the works, though it contained a statement that "The chief engineer certifies that . . . . . he anticipates a successful completion of the whole line
D. 24. without difficulty within the terms of the concession" as in fact he had actually written.

The whole issue of £300,000 was underwritten in London and certificates
A. 3633-3692. to the amount of rather more than £200,000 sold in February 1895. Baron Oppenheim accepted the remainder, nearly £100,000, on his own account. It has not been made clear why he took this course instead
A. 3698. of levying what was due to him from the underwriters, but he still
Evidence, 20th day. retained an interest in a large body of the shares (in 8,100 of 10,000) held on the Continent, and he may have hoped through the retention of these certificates to recover control of a company which had put* so

* He had recovered from the company a portion of Eugène's expenses in Pretoria. He had drawn in commission on the issue of Debentures 42 per cent. of 5 per cent. of £1,500,000, over £31,000. He had underwritten share certificates, and earned a commission of another £1,100. He had sold shares to the value of some £50,000, and was left with £100,000 or so

much money into his pocket. At a later date, in December 1897, and again a year later, he did in fact make unsuccessful efforts to buy back a portion of the shares held under certificates. A. 3900.

Rupture of Relations with the Transvaal Government.

38. In April, 1895, the threatened trouble came to a head, and the Railway Commissioner, Mr. Smit, called on the Paris Board of the Company to make good £400,000. This was of course declined by the Company, which had not and indeed had never had the money in its coffers; on the 7th May the Government broke off further negotiations, and on the 7th June, 1895, intimated to the Company that the payment of the guaranteed dividend on the share-capital had been stopped. Since that time payment has not been resumed, although interest on the Debentures has until lately been provided. D. 18. D. 2, ch. 3.

39. When sanctioning in 1894 the issue of the second set of debentures the Government took the precaution to insure that the proceeds should not be expended without its express sanction, and a sum of about £350,000 remained for some time to the joint account of the Government and the Company in certain London banks. The remainder has been spent partly on the railway and partly in paying interest on debentures. Expenditure on construction ceased first, Mr. Beelaerts van Blokland, the official Trustee, under instructions from his Government, refusing to sign cheques to the contractors until the controversy as to the route should be settled. The point at issue was the subject of a protracted controversy, and proposals were made by the Company to go to arbitration, and by the Government to continue the railway on its own account, but agreement was not found possible, and ultimately the refusal of supplies brought building operations to a complete standstill, and ruined the contractors, who had incurred heavy liabilities for plant and materials. As the result of litigation and legal arrangements between the Contractors and the Executors of Toleman, who had financed them, the interest of the Contractors has passed into the hands of the Attorney-General for England representing certain charities. It is claimed on his behalf that he is entitled, as against the Company, to the line, &c., as far as made, and the plant, rolling stock, and materials, as security for his claims of £90,000. The Contractor Winby has besides a claim against the Company for upwards of £500,000 for extra work done and damage through delays caused by them in the work and in the issue of Debentures, but this claim is inclusive of the £90,000 due to Toleman. D. 2, ch. 3. D. 16. D. 2, ch. 3 and 4. A. 3219, 3222, 3265. D. 2, ch. 4. A. 3174-5-6.

40. After the Government had ceased to allow money to be drawn from the Common Fund for construction, the Company on its part refused to permit its nominee to sign cheques for Debenture interest, so throwing on the Transvaal Government the onus of providing directly for the interest. D. 2, ch. 3. A. 3798.

41. On the 14th March, 1897, Mr. Beelaerts van Blokland, the Government Trustee, died, and the Company made a bold attempt to obtain possession of the balance of the fund, but this was resisted by the South African Republic, and ultimately the whole sum was brought into the Court of Chancery, where it yet remains.* A. 3795. D. iv.

42. In 1895, the Transvaal Railway Commissioner, Mr. Smit, who had visited Belgium in connection with the affairs of the Company, lodged a complaint with the Belgian Government against the malfeasant directors, and in 1896 the Barons Oppenheim printed their defence. Mr. Smit's complaint, which was at first not very strenously pursued, led to the A. 3622, 3627.

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of share-certificates, and he had an interest of some kind in the shares held on the Continent. He had, on the other hand, been compelled to buy back shares from Vorster and Porcheron, perhaps from others, to an unknown amount. A. 3692-3.

* It is believed that a trustee for the Transvaal Government was appointed in the person of M. de Marez Oyens, but this was not established before us.

A. 3627. institution by the Prosecuting Department of the Belgian Government of criminal proceedings in Brussels against the Directors, Robert and Eugène Oppenheim, Henri Warnant and De Braconnier; against the Company's Auditor (Commissaire) Terwangne, and against Louis Warnant, the other party to the fictitious contract.

D. v., A. 3655, 3661, 3807. 43. Two or three months were spent early in 1896 in a correspondence between the lawyers of the Oppenheims and of the Transvaal Government, the latter endeavouring by use of the threat of continuing the criminal prosecution to force a surrender of the Concession by the Company, on the footing that the rights of the respective parties to receive or make compensation should be settled by arbitration, the Company giving substantial security to meet an award against it. The Oppenheims, under duress, were compelled to agree, but they had lost the control of the Company, and were obliged to intimate to the Government that their consent was conditional on the approval of a general meeting of shareholders. And when a A. 3795. meeting was actually held, on the 27th June 1896, the proposal to surrender the Concession was not carried.

A. 3641-3645. A. 3626. A. 3795-8. A. 3670. 44. The English certificate holders then assumed control of the Company, and Mr. Evan Thomas became Managing Director. He took charge of its communications with the Transvaal Government, and pressed its claim with urgency, and though he did not succeed in obtaining a reversal of the decision to stop payment of the dividend, his persistency led to approaches on the part of President Kruger's Government directed to obtaining a sufficient holding of shares to acquire for the Government command of the Company, Transvaal opinion being apparently opposed to the line remaining A. 3816–3823. derelict. The last offer made was £11 per share for three-quarters of the share capital, and it seems to have been understood that, in respect of the 15,000 shares in the hands of the trustees, nothing would go to Baron Oppenheim on account of his 5,000, and that the other certificate holders would so receive £16 10*s.* for each share. Mr. Evan Thomas, who was conducting the negotiation, held out for £17, and no agreement was arrived at.

45. The trustees for the certificate holders have kept back the certificates A. 3694. due to Baron Oppenheim on account of the £100,000 share certificates accepted by him, unissued at the date of the repudiation, and which Baron A. 3696. Robert has, it is stated, agreed he will not claim until the English holders are satisfied in full.

46. On the other hand the Company, though it endeavoured in the D. iv. Chancery suit over the £350,000 to raise an issue in the English courts, has not sued the Transvaal Government in its own court for the dividend due to it, an omission which it explains by expressing its lack of confidence D. 2, ch. 8; D. vi. in that tribunal, though it has counter-claimed in the action instituted against it by the Government.

47. Nor have the directors or the certificate holders taken measures to recover for the use of the Company the proceeds of the sales of the shares empouched by the Oppenheims and their partners, alleging that the Oppen A. 3656, 3676. heims are ruined and not worth powder and shot, and that, the Company's legitimate recourse being against the Government, to attack the Oppenheims would weaken the basis of its claim.

Nor have the certificate holders, except one who appears to have attacked them with success, made any endeavour to recover their money from the authors of the prospectus by which they were misled into their purchase.

D. vi. 48. Between May, 1897, and April, 1898, proceedings in the High Court of Pretoria were begun and continued by the Government for the cancellation of the Concession; the Company on its side entering a defence and making a counter claim for damages of £1,227,000. The case has proceeded no further than the pleadings.

Commandeering of the Railway.

49. On the 9th May, 1900, after the outbreak of war, the Government of the Republic informed the local directors in Pretoria that, acting under the terms of Article 23 of the contract (a clause substantially the same as that in the Netherlands Railway Concession), it had "availed itself of its rights of disposal over your [the Selati] Railway . . . and taken into use the first 14 kilometres . . ." The line was used, as is known, to store the rolling stock of the retreating Boers and was subsequently captured, with its equipment, by the British troops. D. 21.

Criminal Prosecution of Directors in Brussels.

50. The prosecution of the Directors was pressed to a conclusion in 1900 and 1901. The indictment preferred against them by the Procureur-General extends to upwards of three columns of the "Journal des Tribunaux" of Brussels. Its many articles are, however, based on— D. iii.

(1) Three entries made in the Cash Book of the Company on the 13th September, 1892, by which the Directors purport to record the payment by Robert and Eugène Oppenheim, by Montmort and others, on that day into the Company's chest of 11,025,000 fr., balance due by them on the Shares of the Company; and take credit, on the other hand, on the same day for a payment out of the Company's funds to Louis Warnant, contractor, of 10,000,000 fr., and to Westwood and Winby, through the agency of Robert Oppenheim, of 875,000 fr., which three entries were alleged to be fictitious, and to be made with intent to defraud; and on

(2) Subsequent entries made in other and later accounts and balance-sheets in which these incorrect figures were carried forward, and by which they were communicated to the persons whom it was desired to deceive.

51. On the charges so based Robert and Eugène Oppenheim, Henri Warnant, and Terwangne were convicted on the 25th July, 1900, by the Brussels Criminal Court of First Instance, and sentenced to certain terms of imprisonment and fines. Louis Warnant and de Braconnier were acquitted. The convicted defendants appealed, and, except in the matter of Robert Oppenheim who was prevented defending himself by illness, and with regard to whom proceedings were postponed, decisions adverse to them were recorded by the Court of Appeal on the 22nd January, 1901. Eugène Oppenheim was sentenced to 3 years, Henri Warnant to 2 years and 6 months, and Terwangne to 1 year's imprisonment, and all to trifling fines.

52. Neither in the Court of First Instance, nor in Appeal, was it denied on the part of the prisoners that the incriminating entries were incorrect; the defence was that though incorrect they were not fraudulent; that the 10,000,000 francs formed a profit which it was legitimate for the Barons under the Concession to make, or at least one that they honestly thought that they might make, and that it followed that if they might lawfully, or thought they might lawfully, make it, there was no fraud in setting it by cross entries of the same date against their liability on account of their shares; that the payment of 875,000 francs, though not made on the date on which it was entered, was actually made later, and that therefore there was no fraud in it.

53. With regard to the smaller sum, their contention was accepted, and they were acquitted. But as to the 10,000,000 francs, the Appeal Court, in an elaborate judgment extending over 13 columns of print, showed that the Directors of the Company had no right to this money, and that the concoction of a fictitious contract to cover its abstraction, and the web of systematic misstatements, and acts of deceit, by which they had endeavoured to conceal that they had taken it, proved clearly that they knew that they had no right to it.

Conclusions.

54. The present position of affairs may be summarised as follows:—

A liability of £2,000,000, £500,000 in shares and £1,500,000 in debentures, has been created in respect of this railway.

On the shares, no more certainly than £100,000, perhaps less than that sum, was paid up. Five thousand of the £20 shares, lodged by Baron Oppenheim, are lying at Barclay's Bank to the order of the trustees of the certificate holders; 10,000 have been exchanged for certificates to bearer, sold on the London Stock Exchange to *bonâ-fide* investors; 10,000 are still in the hands of holders on the Continent, Baron Oppenheim being interested in the larger part of them.

Of the proceeds, £1,210,000, of the debentures, all but £350,000, now lying in Chancery, has been expended on construction and other legitimate purposes, in return for which there have been built more or less completely 120 kilometres of railway, passing through and terminating at present in one of the most unhealthy wildernesses in South Africa, and requiring, to reach the site of the goldfields, where it is hoped that traffic to justify its construction will be found, prolongation to at least double its present length.

The line, so far as constructed, is claimed to be subject to the contractor's lien for his labour, and to be not yet the property either of the Company or of the Government.

The late Government of the South African Republic has repudiated its liability in respect of the dividend guaranteed to the Company on the share capital, but has until January 1900 met its liability of £60,000 a year interest on the debentures.

The contractors have been ruined, and have a claim against the Company for damages amounting to upwards of £500,000 on account of the delay in the settlement of the route, or other matters, which they aver to be the causes of their ruin.

The late Government began but did not press to a decision an action against the Company to set aside the Concession under the provisions of Section 33 and Section 9 of the contract, and if successful would have incurred a liability expressed in the latter section in these words: "The Government will then have the right to seize all properties belonging to the 'Concessionaires,' returning to them 90 per cent. of the paid up capital of the Company and paying to the Company all moneys necessary for the complete winding-up of the Company."

The Company is counterclaiming more than £1,200,000 damages against the Government.

The shareholders have taken no steps to recover from their late directors the unpaid deficiency of the share capital, though the Company suggested in a communication to the Railway Commissioner in January 1897, that steps shall be taken by the Government to that end. The certificate holders have left their interests in the hands of the directors of the Company, and have taken no steps save to reject a comparatively favourable offer of settlement.

55. Such being the history of the Company, it remains to be considered how the debenture holders and shareholders should be dealt with. No suggestion was made before us that the holders of debenture bonds were in any way cognizant of the frauds perpetrated in connection with the origin of the Concession and the formation of the Company, and they hold an
D. vii. instrument by which the late Government "guarantees and renders itself responsible for the repayment of the capital and the regular payment of the interest" to the holder. The special Commissioner of the late Government, "duly authorised to that effect," countersigned the bond, and before the first issue was made wrote to the representative of the issuing house that the guarantee of the Government was "independent of any default of
D 5 the Company in performing the terms of the Concession," a statement which he repeated in writing before the second issue.

56. Under these circumstances it appears to us that the bondholders hold

duly acquired and valid obligations of the Government of the late South African Republic, and though it may be well to repeat that there can be no duty on the new Government to place the debenture holders in a better position than they held under the late Government before the outbreak of the war, we are compelled to recommend them, subject to this observation, to the favourable consideration of His Majesty's Government.

57. With regard to the sum of £350,000, part proceeds of the last issue of debentures, now in the Court of Chancery, it appears to us that the Court would be likely to recognize a claim on the part of the debenture holders to withdraw this sum, and that any consideration which may be shown to these bondholders should be subject to the condition that they should give every reasonable assistance to the Government to obtain control of this asset, and to use it in part liquidation of the total liability.

58. The shareholders, who unfortunately contain among their number a large body who purchased their shares for substantial value and in good faith in response to the prospectus of 1895, are in a very different position. They hold shares on which a dividend of 4 per cent. was guaranteed by the late Government to the Company. They had no direct contract with that Government, and could not therefore, as individuals, have substantiated any claim against it on the guarantee. If, on the other hand, the Company claimed their guaranteed dividend against the late Government, it would have been met at once by the plea that the guarantee was given (as the fact was) pursuant to the terms of the Concession, and that the principal consideration for the grant of the Concession, that the grantees should create and expend on railway construction a capital sum of £500,000, had failed. It should further be observed that so far back as 7th June 1895 the late Government emphatically repudiated liability on its guarantee to the Company, yet the Company never sought to enforce its claim by legal process until an action was brought by the late Government to cancel the Concession, when the Company counterclaimed its arrears of dividend.

59. The shareholders, in a word, hold shares whose only value was derived from the Government guarantee, and that guarantee has been rendered worthless by the breaches on the part of the Company of the contract upon which the guarantee was founded. Under these circumstances, while sympathising with those of the shareholders who have been the victims of fraud, we can see no good reason why the change which has taken place should give a value to shares which before it had none, or resuscitate claims against the new Government which their predecessors had on good grounds refused to acknowledge.

60. The railway itself has been until recently in the possession of the Transvaal Government, who took it for use as an instrument of war; it has been captured by the British military authorities, and will by them no doubt be shortly surrendered to the Civil Government. The Civil Government should, we think, keep it until a claim is established by someone better entitled. Its cost has been defrayed entirely from the debentures,* and the new Government would seem to have an equitable claim to the only asset created by the expenditure for which, as we have pointed out, it can scarcely refuse responsibility.

61. Finally, we wish to say that, while our enquiry into this Concession has brought to our knowledge frauds and irregularities of a very serious kind on the part of the founders and promoters of the Company, we are of opinion that since the date when the management passed into English hands, irregularity ceased, and the Directors have conducted the Company's business in an honest and straightforward way, and have defended as best they could, in very difficult circumstances, the interests of the shareholders. The case of the Company was laid before us in Pretoria in a clear and business-like manner, and both there and in London every endeavour made to place at our disposal the fullest information.

* The debentures yielded in round figures £1,210,000, of which £147,000 was spent by way of interest on capital during construction. A sum of £350,000 remains untouched. The difference, or something near it, has gone into the hands of the contractors, who in return have constructed no more than 74 miles, worth at their contract price less than £520,000.

ERMELO RAILWAY.

History of the Concession.

1. Ermelo and Carolina, for the benefit of which the Railway, the subject of the Concession under consideration, was planned, are situated to the south of the main line of the Netherlands South African Company from Pretoria to Lorenço Marques, some 70 miles or more from the railway stations of Machadodorp and Dalmanutha. The district to be served is the scene of an important coal mining industry, 11 mines being worked there, and there being besides other undeveloped seams. Memorials in favour of the establishment of railway connexion between Ermelo and the main line to Delagoa Bay were considered by the Legislative Assembly of the Transvaal in 1895, and on the 21st August of that year that body authorised the Executive Government to enter into a contract to build and work the desired line on the best terms obtainable, but without a Government guarantee. Accordingly, on the 1st July, 1896, a concession was granted by the Executive Government to a Mr. P. J. Maherry, who at once sold it to a Mr. John Crosby Aitken Henderson for a consideration of £10,000 cash and £15,000 shares in the proposed railway company. The sale was notified in the "Staats Courant" of the 30th September, 1896, and it was presumably therefore acquiesced in by the Government, who must have been aware that Maherry was not in a position to raise funds, and Mr. Henderson was allowed to make the required cautionary deposit of £10,000.

D. 10. A. 1603-4-5.

D. 1.

D. 2.

D. 2 and D. 10.

2. The position he thus acquired amounted to this: He had a Concession for constructing a railway between specified places which, in the absence of a Government guarantee, was difficult or impossible to finance, but which tended to prevent the consideration by the Government of any rival offer. He was thus enabled—the railway being really wanted—to put pressure on the authorities to give him better terms; and accordingly in September, 1897, the Government at his instigation suggested, and the Volksraad granted a $3\frac{1}{2}$ per cent. guarantee, figures being laid before the Assembly calculated to induce the belief that the cost of construction of the whole line, including buildings and rolling stock, would be about £600,000. A new contract was then drawn, dated April, 1898, between the Government and Henderson, in substitution for the old contract ceded to him by Maherry.

D. 3.

D. 4.

Terms of the Concession.

D. 4.

3. The term of the new contract, as of the old, was 99 years ending 1996, but in some important particulars there were differences. The limits of time for commencing and completing work were necessarily extended; the old security of £10,000 was replaced by £30,000; and the guarantee of $3\frac{1}{2}$ per cent. voted by the Legislature was incorporated. This guarantee took the form of a direct undertaking of principal and interest to the Debenture holders in the sum of £350,000, and a guarantee to the Company of annual interest on a share capital of £250,000, the annual sum limited in this last respect being £8,750.

A. 1608, 1629.

4. The Concession contained elaborate provisions as to the division of the profits of the railway, so as to define the circumstances under which the State guarantee would come into operation, and a special provision under which the Concessionaire, in respect of shares not exceeding £50,000 held by him, might, in the event of a surplus being available, draw thrice the dividend paid to ordinary shareholders. Other clauses of the agreement required that a limited company should be floated to work the Concession, and made provisions of the usual kind for supervision of construction, for tariffs, &c.; and an arrangement was included for expropriation by the State at its option after certain periods on specified terms. The Concession was to be transferred to the Company free of charge, the vendor's profit being limited to the right to hold the privileged £50,000 of shares.

It was required that the work of construction should be let out by public contract, and as a further security the proceeds of the share and debenture issues were to be deposited to a joint account in the names of a Government Commissioner and one of the Directors of the company.

No issue of bonds was to be made until £200,000 of the share capital had been expended on the line. A scale of division of profits was settled to the following effect—out of the net profits available for distribution in accordance with a system of accounting clearly laid down in the Agreement—

20 per cent. to reserve;
10 per cent. to sinking fund of debentures;
70 per cent. among shareholders and directors as provided by the Company's Trust Deed;

but, if the effect was that the shareholders' dividend thus exceeded 5 per cent. on the share capital of the Company, 50 per cent. of the excess was to be paid to Government.

Operations under the Concession.

5. Mr. Henderson made his agreement over to a syndicate on the 8th July, 1898, with the consent of the Government, and measures were initiated to form a limited company. They were not immediately successful, and it is not unlikely that they were hampered by the peculiar arrangement as to the dividend on the Concessionaire's shares. Meantime a curious and not altogether intelligible difference of opinion had arisen with regard to the proper site for the junction to connect the proposed railway and the main line. There seem to have been two more or less suitable places, Machadodorp and Dalmanutha, and the intention of the Volksraad, indicated by its resolution of 1895, was "to sanction the building of a line of Railway from Ermelo over Carolina to Machadodorp, or as near there as possible." The original contract with Maherry, of July, 1896, called it the "Ermelo- $\frac{\text{Machadodorp}}{\text{Dalmanutha}}$ over Carolina" Railway, but left the exact point of junction with the Netherlands line, at Machadodorp or at Dalmanutha or between the two, to be settled by the Executive Council. D. 5. D. 1. D. 2.

6. The Minutes of the Volksraad show that in December, 1896, counter memorials, in favour of Dalmanutha and of Machadodorp, were presented to it, and that the Assembly, after considering them, adhered to its first intention. But the Executive Council when, in 1897, it asked from the Legislature the guarantee of interest on cost of construction, called the line "The Machadodorp-Dalmanutha, viâ Carolina, to Ermelo Railway," while the Raad in reply named it "Ermelo, viâ Carolina, to Machadodorp." The surveys made by Mr. Henderson's staff in 1897 placed the terminus at Dalmanutha, which was probably in an engineering view the better place, the line to Dalmanutha being nearly ten miles shorter, and £84,000 cheaper than to Machadodorp, and in January, 1878, the Railway Commissioner, by approving those surveys under the terms of the Concession to Maherry, which was all that Henderson and his syndicate then held, approved Dalmanutha as the site of the junction. In April, 1898, in the renewed Concession to Henderson, drawn to replace the old Maherry Agreement, the Railway was actually intitled "Dalmanutha, viâ Carolina, to Ermelo," but the second clause of its terms, repeating the words of the older contract, still purported to leave the question an open one to be "decided later on by the Government Commissioner." D. 3. D. 6. A. 1594, 183 D. 6. D. 4.

7. The survey, however, of the line to Dalmanutha did not meet with the approval of the farmers whose land the track crossed; they made representations to the Government, and in July, 1898, the Railway Commissioner wrote to the Syndicate (the Company had not yet been formed), and by authority of the Executive Council, fixed the junction at Machadodorp. To this decision the Syndicate at once took exception, on the ground that the Government had already approved of Dalmanutha, and put them to expense and trouble, which, if the site was altered, would be lost, and urged that it could not alter its decision save with their consent; but they hinted A. 1831, 1833, 1846. D. 10. D. 6. A. 1842. D. 6.

that they were prepared to accept compensation, and the Railway Commissioner, though it is by no means clear that in altering the site he had exceeded his powers or had actually put the Company to any material loss or inconvenience, fell into the trap with mysterious celerity and asked for their terms. He was informed that all claims for compensation would be waived if, instead of the right to take up £50,000 shares with a treble dividend, as provided by the Agreement of April, 1898, the holder of the Concession was given £50,000 in shares outright, and on the 7th October, 1898, he agreed, with the approval of the Executive Council, to this change, and to some alterations in the arrangements regarding the capital of the proposed Company consequent thereon, as well as to a short extension of the date within which the Ermelo Railway Company was to be formed.

D. 6.
A. 1645–6, 1664.
A. 1854.
A. 1872.
D. 7.

8. The Company accepted on these terms the decision fixing the junction at Machadodorp. On the 14th June, 1899, the amended Agreement was transferred by the Henderson syndicate to the Ermelo Railway Company, which had been constituted in Holland in January, 1899, in exchange for £50,000 in fully paid-up shares, and this transfer was approved by the Railway Commissioner and the State Secretary on the succeeding 12th July.

D. 9.
D. 8. A. 1630.
D. 9

9. The result of these four years of negotiation and bargaining was that the original concession to Maherry, which was worthless in the absence of a State guarantee, had grown into a property exchangeable for £50,000 worth of shares in a company whereof the interest on all, and the principal of half, the capital was guaranteed by the Transvaal Government.

10. But more than this had been accomplished. In all the Agreements the State had reserved to itself an interest in the net profits of the working of the line. Under the original contract with Maherry, the Government reserved to itself a proportion which in the later contract was increased. The terms of the two contracts were as follows :—

DISTRIBUTION OF NET PROFITS.

Maherry Contract.	Henderson Contract as amended in October 1898.
20 per cent. to Reserve.	30 per cent. to Reserve and Sinking Fund.
80 per cent. amongst the Shareholders and Directors and Staff, as provided by Trust Deed of the Company.	70 per cent. amongst the Shareholders and Directors and Staff, as provided by Trust Deed of the Company.
In the event of the Shareholders' Dividend being more than 5 per cent., 15 per cent. of the surplus to Government, and 85 per cent. to Shareholders.	In the event of the Shareholders' Dividend being more than 5 per cent., 50 per cent. of the surplus to Government, and 50 per cent. to Shareholders.

D. 8.

The Trust Deed of the Company construed this provision as follows :—

30 per cent. to sinking fund and reserve ;
5 per cent dividend to the shareholders.

Of the remainder :—

35 per cent. to the directors and boards of management.
15 per cent. to the staff.

Of the balance :—

One half to the Government, and
One half to the shareholders.

The effect, of course, being to secure to the directors and staff, should the railway prove profitable, the lion's share of the surplus. This ingenious manipulation of the Concession was accepted by the Transvaal Government.

A. 1630–39.

11. The Articles of Association of the Company were approved by the State Secretary on the 19th January, 1899. The whole of the capital of the company—£300,000—was subscribed, except of course the bonus of

A. 1872–82.

£50,000 fully paid-up shares handed to the syndicate in return for the Concession. The Transvaal Government itself took £50,000 in shares. The proceeds of the share subscriptions were expended on railway construction, and application was made to the Government for leave to issue the debentures. This, however, in view of the then political situation and its depressing influence on the credit of the country, the Government declined to allow, but instead made the Company a cash advance of £50,000. A. 1633, 1865, 1872-4-6.

12. The earthworks of the line were reported to us to be nearly complete, but the work was stopped by the war and has, of course, not been resumed. A. 1864. A. 1647.

Validity of the Concession.

13. None of the agreements made for the construction of this Ermelo line, neither that of Maherry nor those of Henderson, have been before the Volksraad; but that assembly did actually authorise the construction of the railway, and by its later resolution of the 28th September, 1897, may be taken to have confirmed the original contract to Maherry, subject to such alterations as the importation into it of the interest guarantee and the increased share in profit reserved to the State necessarily effected; as well as its transfer, of which they certainly were aware, to Henderson. D. 3.

14. But the increase in the share capital, the grant of £50,000 to Henderson's syndicate, and the manipulation of the scheme of profit distribution are without lawful authority, and were in our opinion neither contemplated by the Volksraad, nor were changes of a character which that body, had it been aware of them, would have been likely to approve.

15. It may be added that the cost of construction, if continued at the rate estimated by the Company's engineer, is likely to far exceed the gross sum of £600,000 approved by the Volksraad as the probable cost of the railway sanctioned by it. D. 11. A. 1639.

CONCLUSIONS.

16. If the British Government think fit to recognise the Concession we recommend that this be done on the terms:

(1) That an equitable re-adjustment of the profits of the line, as between the directorate and staff, the shareholders, and the Government, be substituted for that which we have set out above.

(2) That the grant of the £50,000 shares made without legal authority to the Henderson syndicate be treated, in respect of the Government Guarantee and of the division of profit with the Government, as if it had not been made.

PRETORIA–PIETERSBURG RAILWAY.

Origin and History of the Concession for Pretoria–Pietersburg Railway.
D. 1.
A. 1688.

1. On the 30th October, 1895, the Government of the South African Republic granted to a Mr. Hendrik Jacobus Schoeman a concession for the construction of a railway running from the Railway Station of Pretoria, through Warm-Baths and Nylstroom to Pietersburg, a town nearly due north of Pretoria and distant from it about 177 miles. On the 18th April, 1896, certain important additions were by a contract of that date imported into the agreement.

Terms of the Concession.
D. 1.

2. The agreement between the parties required that the line should be of the usual gauge of 3ft. 6in., and be constructed subject to Government supervision. The route and plans had to be approved by the Railway Commissioner, and the line was to be ready for working within $2\frac{1}{2}$ years.

A maximum tariff was fixed, variable only with Government permission, and very elaborate provisions were included for working a telegraph service in connection with the railway.

The contractor bound himself to float a limited liability company to take up the concession, with a share capital of £500,000 and the right to issue debentures to such amount as was required to complete and work the line, and to pay interest during construction.

The Company so formed was to build, equip, and work the line "for the sum of £5,110 in cash per kilometre (or £8,176 per mile) and no more," and was to take the debentures at 96 per 100.

The Government guaranteed the principal of, and yearly interest at 4 per cent. on, the debentures direct to the subscribers, and a yearly interest of 4 per cent. on the share capital to the Company. Provision was made as to the mode of calculation of the deficiency of interest which the Government might be called upon to pay, and also to enable the Government to buy out the proprietors on specified terms.

The supplementary later contract provided that the Government should subscribe three-fifths of the share capital, that it should nominate one Director on the London Board of the Company, and two out of three Directors of a local board at Pretoria constituted to afford general assistance in the management of the Railway.

These agreements were approved by the Volksraad of the South African Republic on the 7th October, 1895.
D. 2.

Operations under the Concession.
D. 3.
A. 1679.

3. The concession was disposed of by the concessionaire, Schoeman, to the Company, formed as provided by its terms, for 500 fully paid-up shares of £10 each.

D. 4.

4. On the 13th May, 1896, the Pretoria–Pietersburg Railway Company, Limited, was incorporated in London under the Companies Acts, with the stipulated capital of £500,000 in £10 shares, of which £300,000 was subscribed by the Transvaal Government, and with power to raise £1,100,000 in debentures; 80 miles of railway were opened on the 1st July, 1898, to Nylstroom, and the remaining 96 to Pietersburg by the 31st May, 1899.

A. 1682-1685.
D. 5.
A. 1707.

The stations at Pretoria of the Pietersburg Railway and the Netherlands South African Railway were united by a link line on the 1st May of the same year, the junction being made at the cost of the former Company. The works of the railway as a whole were not entirely accepted by the Government, which retains £15,000 out of the Company's cautionary deposit of £40,000 as a guarantee of completion.

A. 1709–14.

5. On the other hand, the Company, against which their contractor has obtained an award, since made a judgment of the High Court of the South African Republic, of £125,635 on account of damages for delay in furnishing plans, has an equal claim against the Transvaal Government for wilfully and maliciously delaying acceptance of plans submitted for their sanction.

D. 3.
A. 1731-1732.

6. So far as the line has yet been worked, it has not earned sufficient to pay the full guaranteed interest on its shares and debentures, and the

Government of the South African Republic advanced the interest on debentures to the 1st July, 1899, and part of the guaranteed dividend to the 31st December 1898.

7. In October, 1899, the Transvaal Government, purporting to act under the provisions of Section 32 of the Concession, in consequence of the war with Great Britain, took possession of the railway and rolling stock, and removed the staff of the Company, mostly Englishmen, from the country. Since that date it has been worked by the employés of the Netherlands Railway, and, later, by the Staff of the British Imperial Military Railways. The terms of this section are as follows :— D. 6. A. 1733-9 D. 7.

"If there be danger of war, war itself, or interior disturbances, the railway and all that is requisite for the use thereof shall, in the interests of defence or of the public peace, be at the absolute disposal of the Government, which may cause the usual traffic thereon to be wholly or partially stopped, and give orders for all measures it may deem necessary. Should the ordinary service be entirely stopped in time of war the contractor shall have no claim for damages against the State unless the railway be used for the service of the State, and the Government shall pay to the contractor in such case reasonable compensation. This compensation shall be fixed by arbitrators in terms of Art. 49."

8. Since the outbreak of war the British Government under an order of Court have taken possession of the £300,000 worth of shares originally subscribed for by the Transvaal Government. It will no doubt now take the further step of replacing by its own representative the Director who was appointed by the late Government to the London Board. A. 1727

9. The Company has published a balance-sheet, dated the 31st December, 1899, showing clearly its financial position. D. 3.

10. No objection was offered to this Concession before us. Objections.

11. This Concession appears to have been lawfully entered into, and honestly carried out. The Railway performs a useful service to the principal industry of the country in facilitating the immigration of native labour, and will form an important link in the chain of communication with the Northern Territories, to which it will presumably be extended. The Government now holds a majority—three-fifths—of the shares in the undertaking enabling it to control the Company. Validity of the Concession. A. 1718-9-1720

JOHANNESBURG–BOKSBURG–VOGELFONTEIN TRAMWAY.

History of the Concession.
D. 2.
D. 1.

1. On the 15th October, 1898, under the authority of the Executive Council of the S. A. Republic, dated two days earlier, there was granted to a Mr. Oscar Scheuermann of Johannesburg a concession for the building of a Tramway from the Terminus of the Johannesburg City and Suburban Horse Tram to a place called Boksburg-Vogelfontein, a distance of some 18 miles beyond the town. The concession was a valuable one, for the line, although expressly limited to the carriage of passengers and their personal luggage and parcels, ran along the main reef, and was designed to serve the principal mines.

Terms of the Concession.
D. 1.

2. The terms of the contract entered into between the State Secretary and Mr. O. Scheuermann were of the ordinary kind, no exclusive privilege was given and all private rights reserved, the period was limited for 30 years, with the usual proviso that in case of extension of the period the concessionaire should have a preference, and the customary provisions were included as to the use and repair of streets, the making of rules and tariffs, as to connection with the railways and with regard to supervision, security, *et similia.*

D. 5.

Only animal power was to be used, unless the Government gave special leave to the contrary. At a later date, in the course of his business negotiations, the contractor asked for and was refused leave to substitute electrical power. A period was fixed within which the work was to be begun and finished. The revenue of the Republic was to benefit by 5 per cent. of the net profits, and the right to buy out the concessionaire after fifteen years on specified terms was reserved to the State.

Operations under the Concession.
D. 4.
A. 1970.

3. On the 26th October 1898, the Concessionaire applied for permission to lay his tramway on the "Main Reef Road now in course of construction by His Honour the Chief of Roads," and on the 21st November Mr. Kentish Moore, the person who seems to have been alluded to as His Honour the Chief of Roads, made a report as to the manner in which the Tramway if laid on the Main Reef Road ought to be constructed, but at the same time expressed to the Official Head of the Roads Department, to whom his report was addressed, an opinion that before the Tramway was laid on the Main Reef Road a reference should be made to the Directors of the Road Trust.

A. 1944.

4. The reason for this recommendation was the peculiar position and character of the Main Reef Road, which had not been constructed entirely at the public cost in the ordinary way, but partly out of the contributions of interested Mine Owners under an arrangement of a special character between them and the Government of the Transvaal. The Government and the owners of the mines had long been at issue as to who should bear the expense of construction, and it had at last been agreed that a contribution should be made to the cost by the Mine Owning Companies, the Government paying the principal part. As the most convenient means of dealing with the matter, a Company, the Witwatersrand Road Trust, Limited, was formed to include and represent the mine-owners concerned, and by it the contribution of the Mines was raised and expended through
A. 1933. its Engineer, Mr. Kentish Moore, who also, it was arranged, should be an officer of and draw pay from the Transvaal Government and expend on its account the public money voted for the purpose.

5. But before they formed their Road Company, the mine-owners had had to face a difficulty with regard to the legal effect of the construction of a road and its proclamation as a public thoroughfare over the surface of land, beneath which they had valuable mining rights. The effect of an unconditional proclamation would have been to very seriously impair their
A. 1970. rights, because, naturally enough, the law does not permit the security of a

public thoroughfare to be put in peril by mining operations beneath its surface. The Government had stipulated that, before public money was laid out on the road, the private individuals concerned should agree to hand over the land to the Government for the proclamation of the road, and the contributors, therefore, made it a condition precedent to their entering into an arrangement with Government that their rights should be as little impaired as was possible, and as their engineer explains, "owing to certain stringent clauses in the mining laws prohibiting under-mining of ground carrying a railway or tramway" all signed an identical declaration on the subject, containing among others the stipulation that "the Government . . . . . shall not grant . . . . . the right to construct or work any tramway . . . . . along any portion of the Reef Road within the boundaries of a Mining Company without the consent in writing of such Mining Company." A. 1944. A. 1944–51. D. 6.

6. The Government was clearly informed in writing of this stipulation; it never expressly accepted it, but afterwards without comment received the subscriptions of the mine-owners and made its own contribution. Under these circumstances we are of opinion that the mine-owners are right in their contention that the Government by its conduct accepted and agreed to the stipulation. A. 1948.

7. When, in reply to the Concessionaire's application, permission was granted on the 8th December, 1898, to lay the Tramway on the Main Reef Road, the Board of the Road Trust, on the 29th idem, protested, and asked that the Proclamation of the Main Reef Road as a public road should incorporate the terms of the Agreement under which they had contributed to the cost. No such proclamation has been issued. D. 5. A. 1924. D. 6.

This application was laid before the Government by the Head of the Roads Department, but was not in terms accepted, Mr. Reitz, the State Secretary, denying that there was any agreement; but he seems to have thought that the matter was not one that could be settled by a simple Proclamation of the ordinary kind, for on the 17th of January, 1899, he instructed the Head of the Roads Department to "make a proposal in connection with the correspondence relating to the matter for the proclamation of the Main Reef Road," and it was probably intended to offer some kind of compromise. So far no proclamation has issued. D. 6.

8. On December 15th, 1898, the special Inspector of the Main Reef Road, acting under the instructions of the head of his department, Mr. J. P. Malan, showed the Concessionaire over the Road and indicated to him the position which, if laid thereon, the tramway should occupy. And on September 15th and October 12th, 1899, respectively, the plans of the work and of the rolling stock were submitted for the approval of the Government. Since then, further progress has been stopped by the war. A. 1934–8. D. 7.

9. The Chamber of Mines, and the Witwatersrand Road Trust, Limited, a body the nature of which is explained above, objected to the continuance of this concession. Objections.

10. For reasons which we have stated fully elsewhere we think that the grant of a tramway concession worked by animal power was within the authority of the Executive Council of the Republic,* and the Concessionaire in this case seems to have complied fully with the terms of his agreement until his further operations were stopped by the outbreak of war. But in the meantime, and until the Main Reef Road is proclaimed a public road, the permission to lay a tramway upon it given to the Concessionaire on the 8th day of December, 1898, is *ultra vires* the Executive Government, which cannot, without the consent of the Volksraad, give any concession in derogation of the private rights of the Mine Owners, still subsisting unimpaired over and under the portions of road lying within their boundaries. Validity of the Concession.

11. The position is, therefore, that Mr. Scheuermann, the Concessionaire, has a valid concession to construct a Tramway, propelled by animal power, from the terminus of the Johannesburg Town Tramway, running about 18 miles to Boksburg, a concession which would permit him to lay his line upon a proclaimed road.

* *See* Introduction to Report, paragraph 28.

That he has obtained from the Executive Government of the South African Republic permission to lay it upon an unproclaimed road, which permission was granted unlawfully, and in breach of an agreement with third parties that no such leave should be given.

But no steps have yet been taken to carry the concession into effect, or to take advantage of the permission given.

Conclusions.

12. If, therefore, this Concession is to be recognised, we are of opinion that it should be strictly limited to the terms of the contract of October 15th, 1898. And if permission is given to use the Main Reef road, an additional privilege estimated by the engineer to be worth a considerable sum of money, this should only be granted for good consideration and subject to the careful preservation of vested rights.

ALBERTSKROON TRAMWAY.

1. This Concession for the construction of a steam tramway between a place called Albertskroon and the neighbouring town of Johannesburg was originally granted to a Mr. Wolmarans in 1898, in the following circumstances. History of the Concession. D. 1.

2. The brickmakers of Johannesburg, mostly poor Dutch, had had their trade and occupation threatened by the loss of the principal brickfields, which had been the source of supply of their industry. These brickfields had been steadily encroached upon by the growth of Johannesburg; a part had been taken by the Netherlands Railway Company as a goods station, and proposals were being made, having regard to the propinquity of dwelling houses, to close the remainder as an unsanitary site. The brick makers, seeing their craft in danger, petitioned the Government, who, to assist them, conceived a plan to substitute new brickfields more remote from the town than the old, and to connect the new fields with the town by a tramway for the transport of bricks, &c., having a terminus as near as possible to the site of the old fields. With the initiation of this plan a person named Dreyer was in some way concerned. A. 50 & 141. Evidence, 9th Day.

3. A suitable field of clay having been found at Albertskroon, a place north-west of and about seven miles distant from the Netherlands Railway Goods Station of Johannesburg, a proposal was mooted to construct a tramway for the transport of bricks, &c., from that place to the site of the old brickfields, and so to place the brickmakers as nearly as possible in as good a position as they were in before. Mr. Wolmarans, seeing a possibility of profit, petitioned for and ultimately obtained the Concession to construct this tramway, after having apparently bought out Dreyer. The Government, on the 1st June 1898, through the State Secretary, approached the Volksraad for approval in the ordinary course, describing the Concession as for "the construction of a light steam tram between Johannesburg and Albert*ville* (a mistake for Albert*skroon*) over Fordsburg, Burgersdorp, and Vredesdorp," but the Legislative body regarding, as they expressly state, the information laid before it in regard to the difficulties of the brickmakers as insufficient, decided to postpone consideration of the scheme. Evidence, 9th Day. Statement of Express Syndicate per Mr. Dumat. Correspondence and Resolutions of the Volksraad. Evidence, 9th Day.

4. On the 15th July 1898, the Government addressed a second missive to the Raad, reporting at length on the grievances of the brickmakers; in this communication, after discussing the Dreyer Tram, they adopted a recommendation of their Mining Commissioner expressed in these words, "the Government can recommend a tramway which shall run from Albertskroon to Vredesdorp, and further up to the old brickfields, as off-loading places, as the brickmakers will certainly be benefited thereby," and urged its acceptance by the Raad. The Raad approved the recommendation set out in the above terms on 18th July 1898.

5. The contract between the Railway Commissioner and the Concessionaire provided for the construction by the latter of a steam tram line for the purpose of carrying goods and passengers from Albertskroon viâ Auckland Park, Vredesdorp, Burghersdorp, and Fordsburg to Johannesburg, with such extensions as were shown on a plan, attached to the contract, which had on the same day been approved by the Executive Council. It allowed the use of roads and streets, subject to certain precautions: it fixed dates within which plans were to be submitted for approval, and work to be begun and finished: it provided for supervision by the Railway Commissioner: fixed the gauge, and stipulated for proper tariffs. Terms of the Concession. D. 1.

The tramway was to be worked by steam, and the Concession was to endure for 99 years, but power was reserved by the Government to expropriate on terms after 20 years.

After providing for a reserve fund, and for a 12 per cent. dividend on a capital fixed at two-thirds more than the cost of construction, any surplus profit was to be used in diminishing tariffs in favour of poor brickmakers, and in certain other ways.

Evidence, 9th Day.

6. This contract, dated the 23rd February 1899, was in substitution for an earlier agreement between the same parties, and was ceded on the day on which it was signed to a Mr. Kentish Moore in pursuance of an agreement made in September of the previous year. The earlier contract has never been before us.

Operations under the Concession.

7. For the purpose of explaining more clearly than could otherwise be done the operations under the Concession, we have caused to be attached a plan showing the termini, Albertskroon and Johannesburg, of the line sanctioned by the Raad's resolution: the trace, coloured red, of the line

A. 1578.

approved by the Executive Council (cited in the Concession as A): the scheme, coloured blue, laid by Mr. Kentish Moore before his friends in

A. 1577

England: and an earlier scheme, marked in a dotted black line, for constructing a coal-carrying line to the goldfields. It is right to say that on the Plan A, which delineated Mr. Moore's proposals to the Executive Council, there were faint indications of extensions which we have been unable to indicate on our plan. They were not, however, such as to affect the general appearance of the comparison of schemes.

8. It will be observed that Albertskroon lies on the north side of the main line of the Netherlands Railway and the gold mines on the south; the Netherlands Railway Goods Station, the site of the old brickfields to be connected with Albertskroon, is, of course, on the Netherlands Railway itself, and therefore between Albertskroon and the mines. The actual distance between the old Johannesburg brickfield and Albertskroon, the length of the line approved by the Raad's resolution, was seven miles: by

A. 50.

practicable railway trace, ten miles.

A. 53.

9. Mr. Wolmarans, when he obtained the earlier Concession above described, submitted it in the following month to Mr. Kentish Moore,

D. 3.

an English engineer, resident on the Rand, and Mr. Moore decided that "it was an agreeable, useful, and practical scheme if handled in an expert

A. 57, 58. D. 4.

manner." He accordingly agreed to buy it for £6,000, and proceeded to develop it as we shall describe.

A. 142.

10. As it first stood the scheme was not one that promised to be profitable; as it left Mr. Kentish Moore's hands it appeared likely to yield

See preceding report, pars. 4 & 5.

very lucrative returns. To explain how the change was brought about it becomes necessary to go back to 1897, when Mr. Moore was appointed to act as managing director and engineer of the Witwatersrand Road Trust, a body charged, by the Mines, with the duty of constructing, in collaboration with the Transvaal Government, a road along the Rand to improve the communication between the mines, town, and railway. In

A. 1577.

that year a plan had been prepared of a Southern Railway to bring the Rand Mines, great consumers of coal, into direct connection with the Netherlands Railway, and so with their coal supply, all of which finds its way to the Rand over that line. For some reason this plan was not proceeded

A. 43, 44, 48.

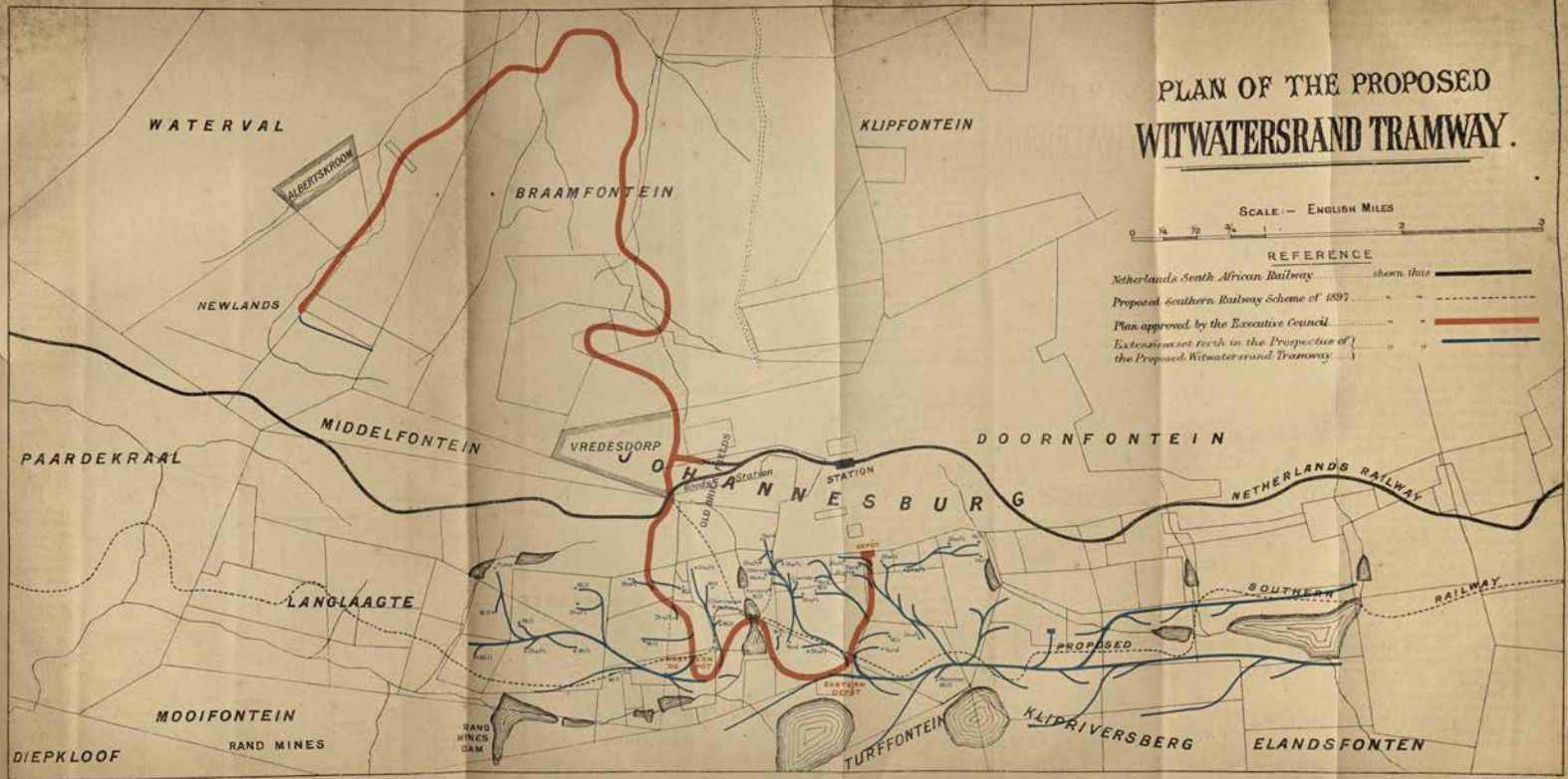
with. In the succeeding year, 1898, Mr. Kentish Moore prepared a scheme for the same purpose, to which he procured the assent of the Netherlands Railway Company, and which he laid before the Chamber of Mines, but without procuring the approval of that body. But direct rail connection with the source of their coal supply was in fact an urgent need of the mines, to supply which appeared likely to afford the opportunity of large profits, and Mr. Moore proceeded ingeniously to graft his coal railway on to the brick tramway, and to produce the "agreeable, useful, and practical scheme" described in his "Report on the proposed Witwatersrand Tramway

A 123, 124.

Company," a scheme so agreeable as, when reduced to figures, to provide a margin between cost of construction and the capital on which dividend was

D. 7 & D. 5.

to be paid of £167,000.


PLAN OF THE PROPOSED
WITWATERSRAND TRAMWAY.
SCALE:— ENGLISH MILES
0 ¼ ½ ¾ 1 2 3
REFERENCE
Netherlands South African Railway ..... shewn thus
Proposed Southern Railway Scheme of 1897 ..... " "
Plan approved by the Executive Council ..... " "
Extensions set forth in the Prospectus of the Proposed Witwatersrand Tramway ..... " "
WATERVAL
ALBERTSKROOM
BRAAMFONTEIN
KLIPFONTEIN
NEWLANDS
MIDDELFONTEIN
VREDESDORP
PAARDEKRAAL
JOHANNESBURG
DOORNFONTEIN
NETHERLANDS RAILWAY
LANGLAAGTE
SOUTHERN
RAILWAY
PROPOSED
MOOIFONTEIN
RAND MINES
DIEPKLOOF
RAND MINES DAM
TURFFONTEIN
KLIPRIVERSBERG
ELANDSFONTEIN

11. The next steps necessary to success were to pay for the Concession and provide funds for preliminary expenses, to obtain the approval by the Government Railway Commissioners, under cover of the Brick Tramway Concession, of a plan which should include both the brick tramway and the coal railway; and to procure the assent of the principal mine owners, without which, it is stated by Mr. Moore, no Transvaal scheme can find financial support in London. All these measures were taken in their order. Mr. Moore formed the Express Syndicate and completed the purchase of the Concession, and made plans, not for a tramway between six and seven miles long "from Albertskroon to Vredesdorp and further up to the old brickfields as off-loading places" to aid poor brickmakers, but for "a huge goods yard" with a rail mileage of 34 miles, which did indeed incidentally achieve the purposes of the tramway, but whose main and important object was to serve the Rand Gold Mines, and to connect them by rail with the Netherlands Line. On the 23rd February 1899 he submitted to the Executive Council, and got the sanction of that body to, a plan which, though it fell short of disclosing the complete scheme so prepared and afterwards carried to London, was yet in fact a wholly different and greatly more valuable enterprise than that to which the Raad had given its approval. Mr. Moore then proceeded to London, and after getting from the principal house interested in Rand mines a letter, which may perhaps be best described as a declaration of neutrality in regard to his scheme, obtained promises of such financial support as he thought justified him in beginning the work. He returned for the purpose to the Transvaal, but the war having broken out, nothing more could be done, and no company was ever actually incorporated.

A. 102, 123.

A. 61, 67.

A. 119-122.

A. 1579.

A. 84-87.

A. 96, 99.

12. This Concession was opposed by the Johannesburg Chamber of Mines.

Objections to the Concession.

13. The scheme, as fully disclosed in Mr. K. Moore's Report on the proposed Witwatersrand Tramway, is entirely different to that approved by the Raad, and by that body expressly limited to "a tramway which shall run from Albertskroon to Vredesdorp and further up to the old brickfields as off-loading places," and the sanction of the Executive Council quoted in its support is inadequate to make good the defect of authority, even if its terms were wide enough, as we think they are not, to cover the "huge goods yard" with 34 miles of rails delineated on the developed plan in the prospectus. We are not satisfied that the Executive Council appreciated the change which had been made in the scheme. But whether this was so or not, it is plain that the Raad never authorised it, and we are therefore of opinion that the concession is, as to that portion of the railway south of the site of the old brickfields, *ultra vires* and void, and to that extent we recommend that it should be treated as if it had not been made.

Validity of the Concession.

Conclusion.

PART II.

MANUFACTURING AND TRADING CONCESSIONS AND AGREEMENTS.

1. DYNAMITE CONCESSION.

2. NATIONAL BANK CONCESSION.

3. LIQUOR, OR HATHERLEY DISTILLERY, CONCESSION.

4. IRON CONCESSION.

5. LEATHER CONCESSION.

6. AGREEMENTS UNDER THE INDUSTRIAL SCHEME OF THE YEAR 1896.

DYNAMITE CONCESSION.

Registration, Capital, and Profits of the Company.

1. The De Zuid Afrikaansche Fabrieken voor Ontplofbare Stoffen Beperkt (known as the Transvaal Dynamite Company) was registered on the 25th May, 1894, in the Transvaal, as sole agent of the Government of the South African Republic, to the exclusion of all other persons, for the manufacture, import, export, trading in and sale of explosive substances of all kinds in the South African Republic.

2. The nominal capital of the Company was £450,000, against which there existed, in June, 1894, value to the amount of £192,625 in cash, and assets, taken over from its predecessor in the explosives trade in the Transvaal—a French Company—worth on an extreme estimate £48,000. Subsequently a further sum of £182,358 cash was obtained by an issue of debentures, so that the total capital available for the purposes of the Company was, in round figures, £423,000. D. 1. (b.) (c.)

3. Thus modestly endowed, the Company carried on its business from 18th June, 1894, to the present time. On the 30th September, 1899, the date to which the books have been made up, the assets of the Company were as follows :—

It had purchased and built factories at a cost of £882,000 written down to £779,000.

It had accumulated reserves under various names to the value of £320,000, and undivided profits of £506,418, and as against a capital of £423,000, possessed property valued by itself at £1,630,000.*

In other words the Company's assets had in $5\frac{1}{4}$ years appreciated almost fourfold.

4. The revenue account of the Company for the period in question shows results scarcely less remarkable.

It had made a gross trading profit of £2,526,033, of which £423,460, or roughly one-sixth, had gone in factory and administration expenses and directors' fees, while £621,000, or nearly one quarter, had been spent in buying off of its predecessor's, the French Company's opposition, the extinction of interests connected therewith, and secret service.

5. The shareholders have had the benefit in this short trading period of dividends and of savings added to the capital amounting together to £1,321,000, while the Government, constituted by the Raad the owner of the monopoly, has received in royalties £264,000, or only a little over one-fifth of the gains of its transferee.

6. Results so magnificent from a business so young warrant a somewhat close examination; we propose, therefore, to give at some length an account of the origin and constitution of the Company and of the terms of the Concession.

7. The allegations made by the Company's opponents against the validity of the Concession may be conveniently summed up under the following heads :—

1. The Government exceeded its powers in granting the Concession.
2. The Company did not carry out the fundamental conditions of the Concession.

These points we shall examine first. The Company traversed both these allegations, and alternatively, on the assumption that these charges were made good, maintained that both the Government and the Volksraad

* It admitted, on the other hand, debts to the amount of £180,000.

by subsequent acts waived the right to treat the Concession as invalid on these grounds.

8. We shall then proceed to inquire whether, as further alleged by the opponents of the Company, the continued existence of this monopoly is injurious to the interests of the community, and whether it is entitled to any compensation if the concession be cancelled.

History of the Company.

9. In December, 1888, the Government of the South African Republic granted a concession to a Mr. E. Lippert for the establishment of a factory with the exclusive right to manufacture explosives in the South African
A. 1983–6. Republic. Shortly thereafter Mr. Lippert assigned the concession to a company largely consisting of French shareholders ; of this company Mr. L. G. Vorstman, a friend of Dr. Leyds and hitherto unconnected in any way with the explosive industry, became Managing Director, and Mr. Lippert sole agent for the sale of its products.

10. This Company, however, instead of manufacturing within the South African Republic, exclusively confined itself to the importation of material
A. 1987. already manufactured.* The British Government strongly protested against this concession, asserting that its existence involved a breach of the London Convention, inasmuch as French were benefited to the exclusion of British subjects in the business. The German Government in the interests of
Evidence, p. 287. German manufacture also protested, so that the effect of the French monopoly was to involve the Transvaal Government in diplomatic difficulties with two important States.† It was accordingly found convenient, after investigation by a Commission, to cancel the French Concession, but this measure, though no doubt tending to the appeasement of the English and Germans, produced fresh diplomatic trouble with the French, whose
A. 1989–92. Government in the interests of the aggrieved concessionaires protested and claimed arbitration.

A. 1996–2022. 11. The Transvaal Government, confronted with this dilemma, adopted the ingenious expedient of declaring the manufacture of explosives a Government monopoly, and of surrendering the privilege so created to a mixed body of German, French, and English manufacturers on terms which left great opportunities to them to enrich themselves at the expense of the mining industry. German and French hostility to the monopoly of dynamite seems thenceforth to have abated, but the consumers, the mine owners of the Transvaal, constituted too influential a body to provoke with impunity, and on their part agitation against the Concession has been bitter and continuous.

12. The way in which this monopoly was created and put into effect was as follows :—

The Volksraad, in September, 1893, on the motion of the Government,
See paragraph 27, *post.* passed certain regulations, to which we shall recur, declaring the manufacture, trading in, and sale of explosives to be the monopoly of the Government of the South African Republic, and gave liberty to the Government to transfer the monopoly to other persons.

D. 5 * In a letter of July 23rd, 1896, Mr. Max Philipp, then Chairman of the Dynamite Company, said : "The French will turn out to be right in the end. For years they have done nothing but deceive the Government into believing they have built a factory, and all the factory does is to work up ready-made European goods."

† In August 1892, Mr. Vorstman telegraphed to the French company at Paris as follows :

Telegram.

Pretoria, August 8th, 1892. "Centramite," Paris.

Gouvernement changé complètement d'avis, exige et propose en dernière instance soit arbitrage, soit renonciation antérieure à notre concession sous faveur unique que société conditions d'autrui égales aura préférence si et quand gouvernement qui reprend le monopole nommera quelqu'un pour exploitation entière ou partielle du monopole de fabrication et de vente des matières ainsi fabriquées. Le cahier de charge à fixer par lui postérieurement. Ce changement résulte d'influence sinistre Nobel et tribulations politiques anglaises. Pas moindre chance changement résolution Gouvernement ; s'agit choisir entre chances dubieuses d'un arbitrage et des chances d'une soumission absolue à discrétion du Gouvernement. Votre décision sera finale, devons répondre mercredi trois heures, télégraphiez immédiatement instructions claires.

(signed) VORSTMAN.

13. On October 25th, 1893, the Government, purporting to be acting pursuant to the Regulations, entered into a contract with Mr. Vorstman, appointing him, to the exclusion of all others, to be sole agent for the carrying out of the monopoly for 15 years, and authorising him to form a company for that purpose. This instrument was varied by a new contract dated May 24th, 1894, purporting also to be made in conformity with the Regulations, between the Government and Mr. Vorstman as trustee for the Transvaal Dynamite Company. On this last new contract the Company's title to the monopoly is founded. A. 2019.

14. Mr. Vorstman had, before October, 1893, made all necessary arrangements for the formation of the company, on the footing of preserving the interests of the shareholders in the French company, and those of certain persons attached to the Company, notably Mr. Lippert, and a firm known as Lewis and Marks, who derived large profits from royalties. A, 2010–2021. D. 2.

15. It is unnecessary to set forth the details of the contracts preliminary to the formation of the Company, for it was proved beyond question that the Government was fully aware of, and assented to them.

16. The articles of association constituting the Company gave it such powers as were necessary to enable it to carry on the monopoly acquired by Mr. Vorstman as trustee for the Company to whom he assigned it.

17. There were, it appears, in 1894, in the Explosive Industry two great combinations in Europe, one German, controlling several German companies and an English company; the other French, controlling a number of companies in France, Italy, and Spain. It will be seen that the Latin ring was the first to obtain possession of the South African market, but that their Teutonic rivals absorbed them and annexed it. A. 2996. A. 3012.

18. A controlling interest in the shares of the German group is held by the Nobel Dynamite Trust Company of London. A. 2996.

19. The "Transvaal Dynamite Company" is a creation of the German group; its head office is nominally at Pretoria, but it has an office at Hamburg, and it was provided by the articles of association that the local directors at Pretoria should be bound to conform absolutely to the decisions of the European Council of advice, which meets in Hamburg and consists of the European directors of the Company, with such of the local directors as might happen to be in Europe. There were five local and eleven or twelve European directors; all the capital was stated to be held in Europe; and the great majority of directors were and are resident in Europe. The Company were bound to import all the machinery, plant, and material required to carry on the business in the Transvaal from Nobel & Co. in Hamburg, Europe. A. 2996. A. 2036–41

20. Not less than ten Directors of Nobel's Trust Company were also Directors of the Transvaal Dynamite Company. It will therefore be seen that the Transvaal Dynamite Company, which was in name a South African Company, was in fact absolutely dominated by a European Board, and that it was "tied" to Nobel & Co., of Hamburg. A. 3059.

21. It is right however to note that Nobel's Explosive Co. (Glasgow) was a constituent member of the German combination, was represented by English Directors on the Nobel Trust Board, and was apparently sufficiently influential to secure for itself some portion of the business which the Transvaal Dynamite Company were bound to give to Nobel & Co., Hamburg. A. 2037.

22. The capital of the Transvaal Dynamite Company is £450,000, divided into £450,000 shares of £1 each. D. 1 (*a*) A. 2042–64.

The shares were first issued as follows:

To the registered members of the French Co., fully paid up, as per agreement	182,500
To E. A. Lippert, as per agreement of 25th August, 1893, fully paid up	25,000
To Dr. Gobert, Hamburg, for services at the time of getting the Agency Contract, fully paid up	22,500
	230,000

To the underwriters of 220,000 shares at par, as under :—

Société Centrale de Dynamite, Paris - -	41,998	
And two others - - - - - -	2	
		42,000
J. N. Heidermann, Cologne - - -	67,195	
And five others - - - - - - -	5	
		67,200
Nobel's Explosive Co., Limited, Glasgow -	50,394	
And six others - - - - - - -	6	
		50,400
Dynamit Actien Gesellschaft, Hamburg -	35,396	
And four others - - - - - - -	4	
		35,400
Rheimsche Dynamit Fabrik, Opladen - -		10,000
Deutsche Sprengstoff Actien Gesellschaft, Hamburg - - - - - - -		10,000
Dresdner Dynamit Fabrik Dresden - -		5,000
		450,000
In other words, to the companies affiliated to the Nobel Dynamite Trust, Co., Limited, or German group - - - -	225,500	
And to the Société Centrale de Dynamite, and the Dynamite Companies affiliated thereto, or French group - - -	224,500	
		450,000

23. The £25,000 paid-up shares allotted to Lippert were apparently given as a recognition of the abandonment by him of a transitory royalty secured by an agreement of the 25th August, 1893, whereby he was to receive 2*s.* per case of dynamite sold by the Company during a period of three years.

24. Dr. Gobert's share of £22,500 was stated to have been allotted to him for the following reason. He was in a position as a member of the original
A. 2062. French Company to control a majority of votes in that Company. Before the formation of the Transvaal Dynamite Company there were two offers before the French Company made with the object of obtaining its support in securing the Transvaal monopoly, one by Nobel's Trust Company, the other by a French combination. It was further stated that Dr. Gobert was prepared to secure and did secure the majority of votes for Nobel's in consideration of this payment.

25. The effect of the distribution of shares thus arranged with Dr. Gobert's assistance was to give the Nobel Dynamite Trust, *i.e.* the Germans, the control of the new Transvaal Company, and so of the monopoly, and they used that control to secure to Nobel's Manufacturing Company of Hamburg the whole trade with the Transvaal, and thus for a long time to exclude (subject to some concessions to the Glasgow Company with whom they were in partnership) all but German-made Dynamite from the best market in the world. It resulted that while the German group shared with the French the moderate dividends on the Company's capital, they were able for a long time to keep for themselves the probably far greater manufacturer's profits, and this accounts for the very great reluctance shown by the Company to carry out their undertaking to manufacture within the country, a reluctance by which the maintenance of the monopoly, always difficult to preserve in face of the bitter hostility created by it, was ultimately gravely imperilled.

Regulations of the Volksraad compared with the Contract of 24th May, 1894.

26. We have already referred to the Government contracts with Vorstman dated respectively October 25th, 1893, and May 24th, 1894, whereby the Company became for a term of years sole agents to carry out the state monopoly. It cannot be questioned that the Regulations prescribed by the Raad to govern the monopoly had the force of law, and no contract made

by the Government could be of legal force if its provisions were repugnant to or inconsistent with any of those regulations.

27. A translation of the Regulations and of the Articles of Contract dated May 24th, 1894, are subjoined in parallel columns for the sake of easier comparison, the corresponding clauses being printed opposite to each other.

VOLKSRAAD REGULATIONS.	CONTRACT OF 24TH MAY, 1894.
The following are the regulations as adopted by the Volksraad :—	The Government of the South African Republic, acting with the Advice and consent of the Executive Council, in accordance with the resolutions dated October 19, 1893, Art. 573, and May 22, 1894, Art. 282, and duly and legally represented by His Honour the State Secretary of the South African Republic, Dr. Willem Johannes Leyds, who signs on its behalf, and is authorized to conclude this agreement by resolution of the Honourable the First Volksraad, dated September 5, 1893, hereafter to be called the Government, of the one part, and Lambertus Gerhardus Vorstman, of Pretoria, of the other part, have agreed as follows :—
1. The monopoly of the manufacture, trading in, and sale of powder, ammunition, fireworks, and all other explosives of every description, remains with the Government of the South African Republic.	Article 1. The Government appoints the second undersigned, to the exclusion of all other persons, its sole agent for the execution of the monopoly for the manufacture, importation and exportation of, the trade in, and the sale of gunpowder, fireworks, ammunition, dynamite, and other explosives of any kind whatsoever. The Agent shall have the right to form a company for that purpose in the South African Republic. The said Company shall, as soon as it is formed, take the place of L. G. Vorstman in this contract, and enter into all his obligations towards the Government in connection therewith, the contract, from the date of the formation of the Company, to be regarded as existing between the Government and the Company, instead of between the Government and L. G. Vorstman, and where mention is made in the following articles of the Agent, the Company shall be understood. The Government shall have the right to appoint a member of the Board of Management of the Company, through whom all communications between the Government and the Company shall be made. The first member so appointed of the Board of Management shall be Mr. L. G. Vorstman. 2. The duration of this agency shall be fifteen years from the date of the agreement, dated October 25, 1893. In matters not mentioned in this agreement, the regulations laid down by the resolutions of the Honourable the First Volksraad, dated September 1 to 5, 1893, herein afore-mentioned, and a copy whereof is hereunto appended, shall be binding.
2. Importation of all explosives is allowed to everyone after having obtained a written permit from the Government; and upon the payment of a maximum special duty of 9d. per lb. on dynamite or other explosives, unless importation is forbidden as mentioned in Article 3.	3. The Government undertakes that in the event of its issuing permits to individuals, as provided by Art. 2 of the regulations, this shall be done upon the following conditions :— (A.) Permits shall only be issued to individuals or associations who shall have made a written declaration that they require the explosives for their own use only, and the quantity shall in no case be greater than is to be used during a period of three months. (B.) No permits shall be valid for more than four months from date of issue. No permits shall be issued at any time when the stock of explosives exist in the country and being the product of the Company amounts to at least ten thousand cases (the 10,000 cases to consist of the various kinds and qualities of explosives proportionately to the requirements of the country). (C.) All explosives under such permits shall be subject to a special import duty of 8½d. (eight and a half pence) per lb. in addition to the usual ad valorem tax. (D.) The Government will, upon an application being made to that effect, appoint an official, who shall every month inform the Agent how many and to whom permits for the importation of dynamite, &c., have been issued, and whether and when such dynamite, &c., has been imported, in order that provision may be made for the quantities required for use.
3. The Government, with the consent of the Executive Council, is empowered to make regulations concerning the importation of, issue, and sale of powder ammunition, dynamite, and other explosives, and, when it appears desirable, to forbid importation.	
4. The Government, with the advice of the Executive Council, has the power to transfer the monopoly for the manufacture, importation, and sale of powder, ammunition, fireworks, and all other explosives to other persons.	See Art. 1.

5. The persons to whom the Government may transfer such monopoly shall take over from the Government the land, buildings, machinery, and all appliances, dwelling-house, furniture, &c., at present known as the Powder Factory, on the farm Baviaanspoort, district Pretoria, of which the Government is the owner, at an annual rental of not less than £3,760, payable quarterly, and shall be obliged to keep all the machinery, buildings, &c., in good order, and eventually redeliver them to the Government in good condition, the customary wear and tear and depreciation in value excepted.

6. The maximum price of powder of every description shall not exceed 1s. 6d. per lb.; and cartridges shall not be higher than the price for which they can be imported from Europe and elsewhere, taking the import duty into account. All prices shall be reckoned as cash prices. The prices stipulated here for gunpowder and other ammunition shall be fixed for a period of three years. After the expiration of that period the prices shall be fixed for a period of three years, and so on in the future, at the end of every three years. At the time when prices are fixed the general European market prices of the same articles shall be taken as a basis, and should the European prices rule higher or lower since the last previous fixing, the Transvaal prices shall be correspondingly raised or lowered. The maximum price for dynamite shall be reckoned as follows :—

For dynamite known as No. 1 - - -	£5 0 0
For dynamite known as No. 2 - - -	4 7 0
For dynamite known as No. 3 - - -	3 13 0

Per case of 50 lbs. nett.

Other qualities of dynamite and other explosives shall not be charged at higher prices than in comparison with their power and value as compared with the foregoing, which shall always be subject to the approval of the Government of the South African Republic. These shall be cash prices, without discount, goods to be delivered at the factory in quantities of not less than 100 cases. The prices of dynamite and other similar explosives are fixed for a period of eight years. After the expiration of eight years, should the European prices rule higher or lower than those stipulated in these regulations, the above prices shall be proportionately raised or reduced.

7. Should it be shown to the satisfaction of the Government that the materials required in the manufacture of the explosives have increased in price subsequent to the issuing of these instructions to such an extent that the cost of manufacture would thereby be materially affected, the maximum prices laid down in Article 6 may be increased (so as to compensate for the increased prices), by the Government, with the consent of the Executive; and also when the price of these materials falls, the Government shall have the right, with the consent of the Executive Council, to reduce the maximum prices laid down in Article 6 by the same amount as the prices of these articles shall have fallen; this increase and reduction of prices shall only hold good during the time of the increase or decrease in the price of the materials.

8. Provision shall be made that the buildings or the factory belonging to the Government, shall not be endangered by the manufacture of powder, or other explosives, and the above-mentioned persons shall be responsible to the Government for any damage done to the buildings, or any loss the Government may sustain in connection with the buildings.

9. The qualities and quantities of all articles provided shall be in accordance with the needs and requirements of the Government and the public of the South African Republic, and the articles, of every description, shall be of the best quality.

10. The Government, with the advice and consent of the Executive Council, shall give instructions that one or more factories shall be completed and brought in working order within the shortest possible period, and at the utmost within two and a half years, for the manufacture of dynamite and other explosives of such nature and such quantities as the needs and requirements within the South African Republic may demand, subject to the following conditions :—(*a*) In the said manufacture, all necessary raw materials procurable within the territory of the Republic shall be used, providing such raw material can be found in quantities and of such

4. The rental of the powder factory referred to in Art. 5 of the regulations is hereby fixed at £3,750 per annum.

The Government shall have the right to take back the powder factory at any time during the period this contract is in force. In that event, and also at the termination of this contract, the Government shall pay the Agent for any special improvements that have been approved by the Government, provided they are in good condition, and according to the value which, allowing for wear and tear, &c., they possess at the moment of transfer. In that case payment of the rental shall only be made up to the day of transfer.

Anything with which it may be found necessary to provide the powder factory in order to keep it up to its present state of working shall not be regarded as a special improvement.

5. The maximum prices, as referred to in Art. 6 of the regulations, which the agent shall be allowed to charge, shall be calculated as follows :

For dynamite known as No. 1 - - - - - -	£4 15 0
For dynamite known as No. 2 - - - - - -	4 5 0
For dynamite known as No. 3 - - - - - -	3 13 0

In providing the Government with ammunition the Agent shall be bound and obliged to charge a price not higher than that at which the Government can import the same from a foreign country exclusive of import duties, and the Government reserves to itself the right to provide the citizens of this Republic with such ammunition in the manner hitherto adopted or according as it shall think advisable, but only for individual use, and not for trade or profit.

6. The Agent undertakes to establish the factories mentioned in Art. 10 of the Regulations within a period not exceeding two years and a half from the date of the signature of the contract, dated 25th October, 1893, at such spots or places in the Republic as the Agent shall determine in deliberation with the Government.

The Government undertakes to apply to the Honourable the First Volksraad, upon being requested so to do by the Agent, for the extension of the time limit of establishing the factories in this wise :—That within two years and a half from the date of the signature of the contract, dated 25th

quality as shall not be prejudicial to the manufacture, or hinder it. (*b*) No explosives of any description shall be imported by the agents, except under the provisions of Article 2. (*c*) Should it appear that materials required for the manufacture of powder or explosives that can be found in sufficient quantity in this Republic are imported from elsewhere, a special duty may be imposed by the Government, acting with the consent or advice of the Executive Council, or by the Volksraad, for the purpose of stopping such importation.

11. The Government shall require from the agents to which it may delegate the execution of these instructions, apart from the rental of the factory as described in Article 5, not less than £3,760 per annum, the sum of 5s. for each case of dynamite or other similar explosives sold (with the exception of the matters referred to in Article 6), weighing 50 lbs. net, and sold by them. Above this the Government shall be entitled to 20 per cent. of the profits.

12. No patent of invention for any discovery of any explosives shall be granted, after the issuing of hese instructions, except with the express consent f the Government, and subject to such conditions s the Government, with the advice and consent of the Executive Council of the South African Republic, may find good.

13. In case any explosive already known, or discovered subsequently, shall be required in the Republic, and should the persons referred to above be unable, or be unprepared, to supply such explosive, or cause it to be imported, or manufactured, the importation to take place under the conditions of Article 2.

October, 1893, the Company shall establish a factory for the annual production of 40,000 cases of explosives, consisting of various kinds and qualities proportionately to the requirements of the country; whilst the further extension of the factories shall, if necessary, be determined upon from time to time, with reasonable intervals, by the Government.

The Agent undertakes to pay every three months the rental fixed by Art. 11 of the Regulations and the sum of 5s. for every case of dynamite sold (handing in duly certified statements of the same), together with the amount of 20 per cent. of the surplus profits, whilst the Government holds the Agent exempt from any special tax.

By "surplus profits" is understood the balance remaining after deduction of all costs, wear and tear, the usual writings off, and interest at 8 per cent. on the capital.

The Agent shall be bound to keep accounts properly in a business-like way, in such manner as is usual in establishments of this kind, and the Government shall have the right to have the books inspected at any time by an official or person or by a commission of officials or persons to be appointed for that purpose.

A proper balance-sheet shall be drawn up annually, in which the surplus profits, as defined by this article, shall be shown. Thereupon a certified copy shall be sent to the Government by the Agent, and the amount due to the former paid over.

So long as no importation takes place under permits the Agent shall be bound to pay the Government a minimum of 2s. 6d. per case for the 20 per cent. of the surplus profits due to the latter, even if the 20 per cent. of the surplus profits should amount to less, and the Agent shall reduce the maximum prices, determined by Art. 5 of this contract, by 5s. per case.

Should the 20 per cent. amount to more than 2s. 6d. per case, the Government shall, of course, have the right to demand the full 20 per cent.

7. With regard to the letters patent mentioned in Art. 12 of the Regulations, the Government undertakes that the following rules shall be enforced:

In the event of the Government issuing letters patent for the invention of any explosive material, such letters patent shall nevertheless not confer upon anyone other than the Agent, whom the Government charges with the execution of these instructions, the right to manufacture and sell the material therein mentioned within the limits of the South African Republic.

Should the Government or the Agent deem it desirable to apply or make use of such invention, and should the Government in such an event be unable to arrive at an agreement with the patentee or the legal possessor of such invention concerning utilization thereof, then shall the parties (the Government and the patentee) each appoint an arbitrator, whilst the third or final arbitrator, if necessary, shall be appointed by the Chief Justice, and whose decision shall be final.

8. This agreement shall be binding within the territory of the South African Republic so far as that now extends, or may at any time extend.

In the event of the South African Republic comprising in the future districts or provinces in which provisions have already been made concerning the materials or matters which constitute the subject of this agreement, it shall depend upon the Government whether these instructions shall also be promulgated in those new districts or provinces.

9. Should the Agent of the Government be unable for a certain period to supply the quantity of explosive materials required in this Republic in consequence of explosions, accidents, calamities, or other hindrances and causes, arising without the aid or fault of the Agent, the Government may import such materials until the Agent shall again be in a position to supply the required materials.

In that case the Government gives the Agent the reference for the execution hereof.

The Agent shall, after any accident as mentioned in this article, be bound to restore the factories to working order within the shortest possible time.

10. In the event of the Government importing any explosive material, as mentioned in Art. 13 of the Regulations, it gives the Agent the preference to do so on its behalf.

14. The Government is empowered to exempt persons employed in the execution of these instructions from war service, commando, or field service.

11. All persons in the service of the Agent are hereby exempted from personal commando—war—and field service, provided that in their contracts included the condition that the Government shall at any time have the right to take over such contracts, if it be deemed necessary, and that such persons bind themselves to serve their time under the Government.

15. The Government shall reserve to itself :—*a.* The right to withdraw the agency for the manufacture of powder, cartridges, dynamite, &c., from the persons afore referred to, should the interests of the State require it. In that case the Government shall be obliged to take over from the agents such provision as they have made for storage and sale, and such contracts as they may previously have made for the supply of the above-mentioned articles, but only such contracts as shall at the offset have been approved by the Government, with the consent of the Executive Council. *b.* The right to sell dynamite or other similar explosives (powder and ammunition not included), in case such explosives have been purchased for certain purposes and subsequently found unnecessary. *c.* The right to forbid the exportation of all these articles in case political circumstances, for example the obligation of neutrality, require it, and the right to limit the issue of such explosives, or to stop the issue altogether, as may appear desirable. *d.* The right to have all orders given by the Government executed before all others. *e.* In case the persons above-mentioned fail to supply the necessary material ordered by the Government, within the stipulated time, or in case the articles supplied are not of the required quality, and the Government may have need for such articles at the time, the Government has the right to procure such articles elsewhere, at the expense of the above-named persons. *f.* Should the above-mentioned persons fail to execute an order given by the Government within twelve months, the Government has the right to withdraw the agency for the execution of this monopoly, unless the cause of failure or delay is to be ascribed to war, or higher power. *g.* Should the above-mentioned persons fail to comply with any of the regulations agreed upon with the Government, the latter has the right to cancel the agreement.

12. During the period that the Government takes advantage of Art. 15 (A) of the Regulations, it shall be bound to purchase from the Agent the quantity of explosives required in the country at the prices determined in this contract, trading expenses to be deducted.

The Government shall then have the right to import such portion of the required explosives as the Agent is unable to provide of his own manufacture.

A reasonable respite shall be allowed the Agent before the Government takes advantage of Art. 15 (F) of the Regulations.

Should the Agent by his own acts, fault, neglect or omission fail to comply with the conditions of this agreement after having been warned in writing so to do, the Government shall, after the expiration of a period not exceeding six weeks, have the right to annul this agreement. If the omission or neglect is wilful, the Government shall have the power to annul this contract without giving any notice.

13. The agent may allow the sale of the articles mentioned in this agreement to take place through the medium of one or more persons.

14. The Agent of the Government is bound to pay import duties for the machinery and implements required for carrying out this agreement.

15. The Government can prescribe measures of precaution or safety with regard to the transport and warehousing of the said materials.

The Government shall not prevent the exportation of such materials except for reasons of danger to the State or other weighty causes.

16. The agreement entered into between the Government and any persons as above mentioned shall exist for not longer than fifteen years.

See Art. 2.

17. In the meanwhile, previous to the completion of the factory, the Government itself may import dynamite or other explosives, which the Government may deem necessary for the requirements of the country, and shall make the necessary arrangements concerning such importation. These arrangements, however shall not be for a longer period than two and a half years.

16. With regard to Art. 17 of the regulations, the Government makes the following arrangement with the Agent, to the exclusion of anyone else :—

(A) During the time that the factories to be erected by the Agent are not completed, the Government shall itself import all materials and things required for the manufacture of dynamite and other explosives in the magazines of the Agent, and in accordance with an estimate of prices, quality and quantity to be approved by the Government, on the understanding that such importation shall only be carried on during the time that the factory or factories are not completed, and in any case not longer than during two and a half years, or during such extension of time as the Honourable the First Volksraad may approve, in accordance with Art. 6, line 2, of this contract.

(B) The Government places the said materials and things at the disposal of the Agent for manufacture, trade, and sale, in accordance with the regulations laid down above, and the Agent manufactures, trades, and sells upon the order and for account of the Government, under the regulations laid down above, in so far as those are applicable hereunto.

(C) The Agent sends the Government statements every month, giving an account of manufacture, trade, and sale, and pays it all monies received for sales, the remainder of such monies, after deduction of 5s. per case and

of the amount paid by the Government for imported materials to be paid out to the Agent.

17. The Agent shall be bound to furnish within eight days of the signing of this contract proper security to the amount of £30,000 for the due fulfilment of the pledge to erect the factories herein mentioned, and for the execution of the contract until such time as the factories are duly erected and in working order, for which purpose all his property in this country shall serve and be placed under due bonds.

18. All disputes concerning the meaning or interpretation of this agreement arising between the parties are to be decided, not by an ordinary judge, but by arbitrators, whose decision, as in a court of last appeal, is to be definitely binding on the parties.

In case the parties cannot amicably agree concerning the interpretation of this agreement, the one party will give written notice to the other that, and concerning which dispute arising from this agreement, it intends invoking the decision of the arbitrator.

Each party then appoints an arbitrator, or failing to do so in time, or in the event of disagreement between the two appointed concerning the choice of a third the appointment or selection shall be made by the Chief Justice or by his locum tenens in the High Court of Justice of this Republic—parties having been heard or summoned.

Thus done and contracted at Pretoria, South African Republic, this 24th day of May, 1894, in the presence of the undersigned witnesses.

Dr. W. J. LEYDS,
State Secretary.

L. G. VORSTMAN.

Witnesses:
C. G. SANDBERG,
P. L. A. GOLDMAN.

Registered in the Register van Akten, at Pretoria, Book C No. 1, folio 431, this 25th day of May, 1894.

A. D. LORENTZ,
Registrar.

28. Looking broadly at the whole scope and tenour of the Regulations, the Raad appear to have contemplated the transfer of a monopoly of such great value to private individuals on the condition that explosives should be manufactured in the South African Republic, that the industry should be under the control of the Government who might at any time for State reasons withdraw it on terms, and that the exclusive right to import the manufactured commodity should be rigidly limited to a defined period of $2\frac{1}{2}$ years.

29. The contract itself was in several respects *ultra vires*, for Article 12 renders illusory the provisions of Regulation 15*a*. and Art. 6 makes provision for an extension of the period of $2\frac{1}{2}$ years, which Regulation 10*b*. prescribes as the extreme limit. There is also strong ground for the opinion that the provision in the contract for the reference of disputes under it to the final decision of private arbitrators is repugnant to the Regulations of the Raad.

30. It may be worth while, before we pass on, to note that the contract was not only so drawn as practically to annul the privilege of importation reserved by the Regulations to private persons, but that the State's duty to import was discharged in a way which threw the whole risk and charge of the proceeding on the public administration, and surrendered the whole advantage to Nobel's Company at Hamburg and the Dynamite Company in the Transvaal. Large funds to provide for the cost of importation were annually voted by the Volksraad. Vorstman, the Dynamite Company's agent, was appointed agent of the State to manage the importation, and acting as such, ordered dynamite from Hamburg on Government account, paid for it out of Government money, sold it at cost price to himself, as agent of the Dynamite Company, resold it to the Public, and accounted to the Government for the price, and to the Company for the profit. A. 2408-11. A. 2470 83.

31. We have not considered it to be material to enter into an examination of that branch of the Dynamite Company's activity which was concerned with the manufacture and importation of gunpowder and ammunition under their contract. We may mention, however, that in September, 1899,

the Dynamite Company imported, for sporting purposes, together with other ammunition, 10,000 Cordite cartridges with split, and 10,000 with soft-nosed
A. 2822. bullets, which were sold by them to the Government on 4th May, 1900, after the English Directors had severed their connection with the Company. It is also shown by correspondence seized in their office at Pretoria that Mr. Max Philipp, the Chairman of the Company, was, during the earlier part of the war, actively engaged in the attempt to obtain in Europe and America guns and other war material for the Government of the South African Republic.

Question whether the Company carried out the terms of the Contract.

32. We understand that His Majesty's Government have already been advised on the question whether the grant of the monopoly under the above circumstances constituted a breach of the London convention and we therefore offer no observation on that topic.

33. We proceed to consider whether the Company in fact complied with the conditions prescribed by the contract of May 24th, 1894, which prescribed two and a half years from 25th October, 1893, *i.e.*, April, 1896, as the limit of time for the completion and bringing into working order of factories for the manufacture of dynamite of such nature and in such quantities as the needs and requirements of the South African Republic may demand.

34. Any provisions in the contract giving the Government power to extend such time were, as we have seen, *ultra vires* and void; but even supposing that the Government could and did extend the time of completion from April to November, 1896, or that the Company were entitled to some consideration for the short delay occasioned by the Jameson Raid, we are satisfied for the following reasons that, in that month, the Company had not completed and brought into working order factories as prescribed by the clause.

D. 3. (1.) The requirements of the country were at that time 200,000 cases per annum. Rather more than this amount was in fact sold by the Company between November, 1896, and November, 1897.

D. 5. (2.) On April 17th, 1896, Mr. Max Philipp, the Chairman of the Company, wrote to his son that "There is absolutely no prospect of the factory "being able to begin work till June or July," and suggested a petition to the Volksraad for continuation of leave to import, "taking our stand on the "previous engagements contained, in fact, in the contract provisionally "obliging us to commence manufacture with 40,000 cases a year." He adds, "Should the Government want a definite date fixed for the factory to "get into full working order, I should advise that the date be put as late "as possible, let us say one year at the very least, and, if possible, two "years, reckoned from April, or better still, from November of this year."

D. 5. In a letter of June 3rd, 1896, he wrote, "You must convince Dr. Leyds "that it is not possible to found a factory for a monthly consumption of "15,000 cases in a country where, for the smallest repairs of such highly "complicated machinery, the extra parts may possibly have to be got from "Europe. . . . I have taken such measures . . . that the factory is "to be completed and, in order to provide for eventualities, that a stock of "about 100,000 cases is to exist on the day when the import, as hitherto "carried on, ceases. 100,000 cases represents the sales for about five or "six months, and it is quite obvious that in a country like the Transvaal "there must always be a supply of at least 60,000 cases in the magazines "in order that by some unlucky accident we may not run the risk of seeing "the mining industry deprived of dynamite." He also pointed out in this letter that the consumption was already nearly 15,000 cases, and would probably by the end of the year be 20,000 cases a month.

D. 5. Writing on July 23rd, 1896, to Mr. Vorstman, Mr. Philipp urged that everything should be done to induce the Volksraad to allow the Company to keep a stock on hand sufficient to meet six months' consumption, and he adds that if this stock cannot be produced in the factory it must be imported.

On the 15th September, 1896, Mr. Philipp expresses his satisfaction that

the Government had decided "to allow us to import whatever may be wanted "over the 80,000 cases which we produce ourselves"; and on the 7th October he writes that he is awaiting information that the representatives of the Company were "in possession of the Government instructions to "enter into a new contract for the further importation of the dynamite "required over and above the 80,000 cases."

(3.) On 2nd October, 1896, Mr. Vorstman, writing on behalf of the Dynamite Company to the Executive Council, states that "our factories are "complete and that our Company is in a position to manufacture 80,000 "cases of explosives per annum." He then proceeds: "as through "unforeseen circumstances the consumption of explosives in connection with "the mining industry in this State has very largely increased since the "signing of our contract and the demand for such substances is now much "more than could have been expected at the time, we have the honour of "respectfully asking the Government whether they will now decide to give "us an order to build further factories with the object of being able to "cover the consumption of explosives, in which case we shall be ready to "complete such factory within two and a half years after receipt of the order." D. 5.

The admitted production at the Factory in November and December, 1896, amounted only to 8,464 cases, and from the 1st January to 31st December, 1897, to 79,533 cases.

(4.) Two Commissions sat and reported on the Dynamite monopoly in the year 1897—the first appointed by the Raad called the Volksraad Dynamite Commission, the second appointed by the Government called The Industrial Commission. The sittings of the first commission were private, of the second public. The second enquiry was very elaborate and occupied several months and pointed attention was drawn by opponents of the monopoly to the failure of the Dynamite Company to fulfil their obligation to erect adequate factories within the prescribed time. No witness was called before the Commission from the works on behalf of the Dynamite Company to refute this, no books were produced and Mr. A. Philipp, the only witness called by the Company, did not allege that in November, 1896, the Factory had a capacity to produce more than 80,000 cases. On the contrary, referring to October, 1896, he stated, "that it was thought desirable that the actual production should be limited to about 80,000 cases per annum which should subsequently be gradually increased as considerations of safety might admit." D. 3. D. 4. D. 4.

35. Under these circumstances we are unable to accept the suggestion that a factory had been in November erected in working order capable of producing 200,000 cases; and we entirely dissent from the contention that the deficiency of the producing power of the factory in November, 1896, could, within the meaning of the contract, be made good out of imported stocks then at the disposal of the Company.

36. We are therefore of opinion that the contractors failed to fulfil a fundamental obligation of their contract prescribed by the Raad, and that unless the Raad itself waived or condoned that breach the contractors from that moment lost their legal rights under it.

37. It was, however, argued for the Company:

(i.) That the Government had under Clause 15 *g.* of the Regulations the discretion to waive the breach of contract and had done so.

(ii.) That the Government had not given six weeks' notice under Art. 12 of the contract.

(iii.) That even if (i.) and (ii.) did not protect the Company from the consequences of the breach the waiver of the Government had been adopted by the Raad.

See Mr. Rooth's arguments in the Minutes of Evidence; 16th Day, and Case of Company, D. 7, and supplemental case, D. 8.

38. As to (i.). The clause in question does not give a discretion to the Government to cancel or not to cancel when the fundamental provisions of the Regulations are violated; it gives in our opinion such a discretion only when agreements made by the contractors with the Government prescribing the method of carrying out those Regulations are broken.

(ii.) Even if this Article was not *ultra vires* having regard to Clause 10 of the Regulations, both parties to the contract treated it as inapplicable. The Company, avowing its inability asked for 2½ years' extension of time, and the Government granted it.

Question whether the right to cancel Contract on account of breach of conditions was waived by the Volksraad.

(iii.) It is quite clear that the Government did waive the breach, but we have seen that it had no power to do so, and that the waiver, unless sanctioned by the Raad, would not affect the legal position of the Company. It is therefore of cardinal moment to ascertain whether the Raad did ever expressly or implicitly adopt or sanction the waiver by the Government of the breach of contract.

39. So far back as 8th June, 1894, the Company had applied to the Government that the period of 2½ years within which the works were to be completed should be reckoned from May 24th, 1894, instead of 25th October, 1893, to which request the Government, through Dr. Leyds, Secretary of State, on the 14th July assented. Both the Government and the Company must have been aware that this act required the authority of the Raad, for provision had been made by Article 6 of the contract of May 24th, 1894, that the Government should apply to the Raad for an extension of time, and
A. 1711. the Government in fact made the application. By resolution dated 13th September, 1894, the Raad definitely refused the authority requested and charged the Government to act strictly in accordance with the regulations. This Resolution was never expressly repealed.

Mr. Rooth's argument, Minutes of Evidence, 16th Day, and D. 7, and D. 8.

40. It was, however, urged that various subsequent resolutions of the Raad rejecting sundry motions of members hostile to the monopoly, implied that the Raad, despite the positive refusal to vary its regulations or extend the time, had subsequently adopted the act of the Government, in granting the indulgence in question to the Company. A similar implication, it was urged, arose from the passing of the Explosives Act, in September, 1896, and February, 1897, to meet the importations by the Government of explosives.

41. A substantive resolution such as that of the 13th April, 1894, cannot be repealed by implication, unless the implication is grounded on facts which are necessarily inconsistent with its continued existence.

42. In our opinion, the resolutions relied on were perfectly consistent with an attitude, on the part of the Raad, of judgment suspended until the facts as to the breach by the Company of its contract had been definitely ascertained by formal inquiry. Such an enquiry was instituted as we have already seen in 1897, Both the Industrial Commission of Inquiry and the Volksraad Dynamite Commission came to virtually the same conclusion as to the failure of the Dynamite Company to manufacture at the end of 1896 the explosives required for the consumption of the Transvaal. The
D. 2. Volksraad Dynamite Commission, reporting 26th February, 1897, stated that "the Government agent has informed your Commission that the "productive capacity of the said factory, which is not completed, does not
D. 4. "at present exceed 80,000 cases per annum." The Industrial Commission, "reporting on the 27th July, 1897, stated that there were "good grounds for "believing that the contractors had failed to comply with the conditions of "their contract, which require them to establish, complete, and bring into "operation on or before 24th April, 1896, one or more factories for the "manufacture of dynamite and other explosives, of such nature and quality, "and of such quantity as the requirements and demands within the South "African Republic shall necessitate," and recommended, "that the case be "placed in the hands of the legal advisers of the State with a view to "ascertaining whether the contract can be cancelled."

D. 7.
D. 8. 43. A far more weighty contention on behalf of the Company was based on a Resolution of the Raad, Art. 959 of 25th August, 1899, by which the recommendations of the majority of a third Commission, appointed in that year to deal with the whole subject of the Dynamite contract, was in

terms adopted. That report of this Commission treated the contract of 24th May, 1894, as subsisting and recommended certain amendments by which the Government's royalties should be increased. The report was ultimately in due form embodied in a formal contract between the Government and the company, dated December, 1899, and authorised by the Raad. D. 10.

44. Unless it can be on other grounds impeached, this act by the Raad appears to be a clear waiver of its right to cancel the original contract either on the ground that it was *ultra vires*, or that the Company had not fulfilled its conditions.

Effect of the Monopoly upon Public Interests.

45. Before we consider whether the Company is entitled to rely on this waiver, we must enquire whether the continued existence of the monopoly in the hands of the Company injuriously affects the public interests.

46. We refer in the first instance to paragraph 34 of this Report, and we direct very special attention to the fact that the total sales of explosives from June, 1894, to 30th September, 1899, amounted to 1,102,060 cases of 50 lbs., and that the profit on the manufacture of this immense output was proved to be more than £2 per case. Of this profit only 5s. per case came to the State. D. 3.

47. Setting aside altogether payments to the French shareholders and Mr. Lippert, payments which may have been made at the instance of the Government to secure diplomatic peace with a powerful State and to avoid litigation with the French Company and the persons linked in interest with it, there yet remain features connected with the distribution of the enormous profits above referred to, which, it may be fairly supposed would have induced a Government, having any solicitude for the public purse, or for its own just rights under the concession, to avail itself of the default of the company to forfeit or at any rate largely modify its privileges.

48. During the period June, 1894—30th September, 1899, the Government received in royalties £264,283 4s. 7d., Mr. Lippert in royalties £33,714 16s., and in Commissions £286,610 5s. 11d., Messrs. Lewis and Marks £60,087 9s. Mr. Lippert, it is true, condescended to do the work of agent for sale of explosives for the Company, and had offices for this purpose in Pretoria and Johannesburg. Messrs. Lewis and Marks, as Mr. Samuel Marks candidly avowed, drew an income of £10,000 per annum for doing nothing, beyond withdrawing an opposition with which he had at one time menaced the grant of the Concession in case his firm did not obtain a share in its benefits adequate, as he conceived it, to his own influence and position. D. 1 (*b*). A. 2806-16.

49. Again £275,000 is carried to reserve funds, £45,000 to explosive fund, £299,958 are written off, with the result already described on the capital account of the Company, and £84,542 is expended in Directors' fees and bonuses of which no less than £38,182 17s. 9d. are appropriated to Messrs. Vorstman, A. Philipp, and Bourne. In 1895 Mr. Max Philipp draws £3,600 under various headings in which are included travelling expenses, special services, freight and duty on cigars, wines and provisions. In addition Christmas boxes in various quarters, presents of violins, gold watches, vases, wines and cigars were made. Lavish entertaining (£120 15s. 6d. was paid for "lunch" for Mr. Max Philipp during September, 1895), subscriptions to clubs, shooting prizes, presents to newspaper Editors, gifts to churches, illustrate the almost insolent profusion with which the profits in which the Government ought to have largely participated were reduced. Lastly £39,100, at least, was expended in secret service in Pretoria in 1897, 1898, 1899. D. 1 (*b*). D. 1 (*a*).

50. A very large number of these items were stated by the accountant to be, and some clearly are, inadmissible in taking the account between the Company and the Government under cl. 11 of the contract, but the exact figures must, if such an account ever becomes necessary to be taken, be ascertained by a professional arbitrator after hearing both sides.

51. In favour of the Company it may here be said that they did at last succeed in building a dynamite factory of a very complete kind and great productive power at Moddersfontein. We were not ourselves able to visit and inspect this factory, but we obtained a very full and well-drawn report upon it from an expert officer, Major Buckle of the Royal Artillery, which satisfies us that these works now rank among the first of their kind.

D. 6.

52. The preceding history warrants the conclusion that this monopoly, declared by the Raad to be the monopoly of the Government, transferable on certain conditions only, was transferred to the Transvaal Dynamite Company by the Government by a contract some of the terms of which were inconsistent with those conditions, and that the Company broke the terms even of that contract so as to render it liable to cancellation.

53. It was clearly desirable in the public interest that the monopoly in the hands of this Company should be put an end to or modified, for, although ultimately it did erect a fine factory, its administration was recklessly extravagant, and its gains were utterly disproportioned to those of the State, and were a heavy burthen on the largest industry in the country. Yet the Government did not use the right which we have seen it possessed to cancel or, for a very long time, even to modify the contract, but on the contrary condoned the breaches of it by the Company. To this condonation or waiver, as we have seen, the Raad for a long time was no party, but ultimately in August, 1899, it adopted and confirmed the Government's action by modifying, extending, and so recognising, the Company's contract. A policy so astonishing requires explanation, and explanation is to be found in the following circumstances.

Circumstances connected with the Ratification of the Monopoly by the Volksraad in August, 1899.

54. To appreciate the full significance of the facts about to be stated the following dates should be borne closely in mind. So far back as 1895 the methods and operations of the Company had been the subject of debate and criticism in the Raad, and one Petition at any rate from the Chamber of Mines, adverse to it, had been considered. April and November, 1896, will be remembered as the critical dates on which the building periods under the contracts of 25th October, 1893, and 24th May, 1894 expired. In 1897 the two Commissions sat to whose reports we have already referred. In January and February, 1898, three lawyers distinguished in South Africa—Mr. Reitz, Mr. Curlewis, and Mr. Schreiner—wrote legal opinions asserting that the contract had been rendered invalid by breach. These opinions, with a further one written by Mr. Smuts in a contrary sense, were under consideration by the Raad in November, 1898. April, 1899, was regarded by Mr. Vorstman as the "severest crisis through which the Company had yet passed." In January, 1899, Mr. Chamberlain's despatch severely criticising the Company's position and working was written. In March the Raad refused a proposal by the Government in connection with the monopoly and resolved to refer it back for action to be taken strictly in terms of Art. 1666 of 1897. In August a Commission to finally settle the Dynamite question sat, and on 27th August, the report favourable to the Company, proposing certain amendments in the concession, was adopted by the Raad.

See *ante* par. 33
ante par. 42.

Evidence, 16th day.
Sessional paper C. 9317 of 1899.

D. 12.
C. 9317 of 1899.
Evidence, 16th day.

C. 9317 of 1899.
Evidence, 16th day.

55. In October, 1896, the Executive Council consisted of President Kruger, Dr. Leyds, (who was State Secretary), General Joubert, and Messrs. S. W. Burgers, J. M. Kock, and J. M. A. Wolmarans. Dr. Leyds retired in May, 1898, and was succeeded by Mr. Reitz. Mr. Klimke was the State Mining Engineer.

Minutes of Volksraad

A. 1974 & 2034.

56. Mr. Vorstman and Mr. Alberto Philipp (the son of Mr. Max Philipp) were in April, 1896, to October, 1899, jointly Vice-Chairmen of the Transvaal Dynamite Company in Pretoria, and in the ordinary course all important matters and correspondence affecting the Company were discussed by them in concert. Mr. Max Philipp was in the habit of corresponding in German with his son and Mr. Vorstman on the affairs of the Company. Some of

these letters were seized by an order of the Military authorities at Pretoria before our arrival there, and invaluable assistance was afforded to us by Mr. Van Hulsteyn, acting as Honorary Solicitor for the Imperial Secretary, who from a great mass of documents extracted much important material. We have, since our return to London, had a translation of the material parts of this correspondence made by an expert German scholar. The letters D. 5.
to Mr. Vorstman in our possession do not extend beyond the end of the year 1896. The last of the letters to Mr. Alberto Philipp (except one written in August 1900) is dated October 5th, 1898. Mr. Vorstman said in evidence that, after the capitulation at Paardeburg, he had destroyed the rest of Mr. Max Philipp's letters to him as well as his own letter books A. 2490-96.
containing copies of his letters to Mr. Max Philipp. We fear that in this holocaust much valuable information must have perished, but enough is left to throw light upon the actions of the Company.

57. It appears from the correspondence in our possession, that the State D. 5.
Secretary, Dr. Leyds, a member of the Executive Council, and the chief adviser of the Government, was the frequent associate of the representatives of the Company, and constant references are made to him in the letters from the Chairman to the Directors in Pretoria.

58. Thus on the 15th September, 1896, Mr. Max Philipp advises Mr. D. 5.
Vorstman that he should get the draft of a proposed letter to the Government "settled by the smartest lawyers out there, perhaps by Dr. Leyds himself, so "that the letter may not be capable of being construed as meaning that we "were behind-hand with our contract and obligations in regard to the "consumption."

59. On the 17th April, 1897, an interview took place between Messrs. D. 5.
Max Philipp, Vorstman, Klimke, and Dr. Leyds. "It was in so far highly "interesting (Mr. Philipp writes to his son) as I got the conviction therefrom "that Dr. Leyds will do everything that he can possibly in the interests of our "Company." This was all the more satisfactory, since, at the beginning of the interview Mr. Max Philipp had found it necessary, in consequence of a recent Volksraad Resolution, to reproach the State Secretary "with not having in any way defended the interests of the Company." But after a long discussion of the whole situation Mr. Philipp felt sure, as he wrote to his son, that "when we have arrived at a decision Dr. Leyds will do everything to "help us to carry it out, and it must then be your endeavour, by help of "Wolmarans and our friends out there, to bring the matter into the proper "stage, so that on the return of Dr. Leyds the people may be prepared for it."

60. From a letter to his son dated 30th June, 1897, it appears that Mr. D. 5.
Philipp had had further conversations with Dr. Leyds as to the best policy which the Company could pursue in order to meet without loss the attacks made upon it. He was left with the comforting conviction that "we can "reckon with the President, Leyds, and Klimke himself, who almost form a "Government within the Government, for these three gentlemen are the "only ones who really want to carry out the contract *bona fide*. That Leyds "has enemies out there cannot be helped, for these gentlemen in Johannes-"burg are sure to be filled with hostility to the officials who do their duty "properly."

61. In the same letter we find that with the approval of Dr. Leyds a telegram was sent by Mr. Klimke in Europe to Mr. Smits Dumont, an official member of the Industrial Commission at Pretoria, saying that no conclusion should be come to by the Commission until the State Secretary and Mr. Klimke returned to South Africa, fortified by the opinion of an eminent German lawyer. "I think," added Mr. Philipp, "this telegram will have "attained its object. In addition Leyds telegraphs me that he has cabled "asking the Commission to come to no conclusion until he and Klimke are "back with their Report."

62. Again in 1896 Mr. Philipp instructed Mr. Vorstman to consult with D. 5.
Dr. Leyds as to the claim which the Company should make in respect of losses suffered through the attempted "revolution" at the beginning of that year. From his own experience in the case of American Republics he

deduced the conclusion that the claim should be of an "inflated" character, and expressed some indignation, subsequently, on finding that Dr. Leyds took up "an unsympathetic attitude with regard to that project."

63. It is clear that in 1897 Dr. Leyds had become a warm ally of the Company. The importance of obtaining his co-operation had been present at an earlier date to the mind of the Chairman. We have already referred (paragraph 34) to the letter of June 3rd, 1896, in which Mr. Philipp instructed his son "to convince Dr. Leyds" that it was not possible to build in the Transvaal a factory equal to meeting the demands of the mining industry. There is, it will be seen, evidence that, in this and other instances, the officials of the Company did not rely, for the purpose of securing conviction, solely upon the cold processes of argument.

D. 5.

64. On April 22nd, 1896, Mr. Max Philipp wrote from Hamburg a letter to Mr. Vorstman at Pretoria, in which the following passages occur:—

Syndicate in Dynamite Company shares.

"You will doubtless remember that I have at different times spoken to you about the purchase of the Transvaal shares which are still lying with the Hamburg Dynamite Company, and the disposal of which the superintending committee has reserved to itself. As these shares have in the meantime suffered a heavy fall on the Paris Bourse, and it is expected that, when the forthcoming dividend of the Transvaal Company is declared ($7\frac{1}{2}$ to 10 per cent.), the shares may have a still further fall, the superintending committee has decided to sell its shares to a syndicate consisting of various friends of mine. My opinion is that within a few months the shares will recover the fall in price, and a fair profit will be gradually obtainable.

"I think it only fair to offer you and Dr. Leyds a share in this syndicate; you as a collaborator who is as well acquainted with the position of affairs as the writer of this letter, and Dr. Leyds who has taken such a great interest in this undertaking, and has always met our company with the greatest good will.

"There is no necessity, my dear Herr Vorstman, for you to send me any money for this syndicate, as we have arranged the matter with a group of banks, which is giving us the necessary means, at a moderate rate of interest (3 per cent.). I am therefore assigning you and Dr. Leyds 25 per cent. of the whole amount, and I am confident that you will gladly accept it. The sum in question is £5,000, and, if we only approximately get the same price as before, which I do not in the least doubt, the profits which may gradually be made on this 25 per cent. will be from £7,000 to £9,000; more, of course, if the previous price of 125 francs per share is again reached. To-day the price is 64 francs and the syndicate has paid the company for this total amount 50 francs per share, so that the whole business shows a profit now. Please let me know your decision as soon as possible, and you will get the accounts in due time, if you are inclined to go in for the business."

D. 5.

65. On June 19th, 1896, Mr. Philipp wrote a letter in English, from Paris, to Mr. Vorstman, from which we quote the following passages:—

"I have just received your esteemed of 24th May, and am very glad to get the confirmation of the cablegram informing me that our friend Mr. L. accepted the participation of the Syndicate. As soon as I am back in Hamburg I will make up the accounts of what is sold already, and you will kindly inform me where I have to remit the amount.

"I hope that the contents of my letter of the 22nd April made some impression on Mr. L., as you know I only told him the truth of the matter. It will be very difficult for us, if not impossible, to begin with the consumption of 20,000 cases a month. Such a thing never has been seen in Europe, where our greatest factories do not manufacture more than from 5 to 600 cases a day, etc., etc."

D, 5.

66. It appears from a letter addressed by Mr. Philipp to Mr. Vorstman on the 6th August, 1896, that, in consequence of the continued despondency on the Paris Bourse, the syndicate for the speculation in these 5,000 shares turned out somewhat of a failure. Mr. Philipp thought it better to realise,

and, although the transaction ended in a net profit of £813 13*s.* 7*d.* for each member of the Syndicate, this was very far below the expectations of its author. The gift, however, even of this trifling profit was not unconditional. In a second letter, also dated 6th August, 1896, after a reference to a motion adverse to the interests of the Company which had been carried in the Volksraad, and to certain questions of railway transport, Mr. Philipp observes:—

> "You must of course only understand the communication in regard to the 5,000 shares syndicate in the sense that the money is to be given to our colleague, if you are convinced that he has really been of some service in the matter or has, at least, shown the best intentions towards us, otherwise you had better wait till he really has something to show in the way of a service."

67. Mr. Vorstman, in his evidence before us, went so far as to admit that it was "quite likely" that he had paid the £813 13*s.* 7*d.* arising out of this transaction to Dr. Leyds. A. 2203.

68. A further opportunity of refreshing the friendship of Dr. Leyds now occurred. Mr. Max Philipp mentioned, in a letter written from Vienna to Mr. Vorstman on September 15th, 1896, a certain prospective gold mine syndicate, six bonus shares in which he had already given Mr. Klimke, the State Mining Engineer, in view of the fact that he would be "of the greatest use to us in Paris, as his name is in very good repute." In a letter to Mr. Vorstman of October 1st, 1896, Mr. Philipp said that, if a report satisfying the French bankers could be obtained, "I should like you "to give one of our shares to Dr. Leyds in our name for his constant friendly "services. I hope you approve of this idea, and that Dr. Leyds will be "ready to accept the share." The gold syndicate. D. 5.

69. On October 7th, Mr. Philipp wrote again with regard to this gold syndicate, that "if we have good results to show for our prospecting work "we have every chance of doing an enormous business," and added, "It "will be an easy matter here should the French bankers, as I said, be "convinced that the farms are all right, to form a company with an enormous "capital, whereby it will also be easy to pay the profits to the members of our "Syndicate partly in cash, and partly in shares. Please don't forget to "offer Dr. Leyds a portion of these founders' shares." D. 5.

70. A further reference to this gold syndicate is made in a letter of November 17th, 1896, in which Mr. Philipp says, "You are perfectly right "not to offer Dr. Leyds a share in the syndicate until we are assured of "success." The context seems to show that the word "success" refers to the financial success of the project. D. 5.

71. Meanwhile a third means for rewarding the past, and stimulating the future, services of Dr. Leyds had occurred to the chairman of the company. In a letter written from Paris to Mr. Vorstman on October 30th, 1896, we find this interesting passage:— The Dynamite Agency Company shares. D. 5.

> "I see by your telegram referred to above, about the limitation of production, how you continue to work in harmony with Dr. Leyds, and how his goodwill helps us over many and serious difficulties. I think that we must now, on our side, prove our gratitude to Dr. Leyds in some form or other, and, in view of the fact that the new Agency Company is in a better position than the large company to show the latter's produce in its net returns, since we have too few particulars at our disposal over and above the cost price, I have addressed the enclosed letter to Dr. Leyds, offering him a share in the Agency Company, free. You will please examine the contents of this letter, and, if you approve of it, and agree in principle to taking this step, hand the letter to Dr. Leyds. Perhaps you would do well to have a few words with Dr. Leyds about it beforehand, so as to be certain that he will accept the share, and I should, under no circumstances, like to expose myself to a fiasco. I leave, then, this delicate matter in your hands, as always, as it is in the best hands, and will you please send a word about it by telegram. If Dr. Leyds agrees to my offer wire

(Underlined in original.)

"acceptado," and, if you should not think fit to give him the letter, 'refusado.'"

72. It does not appear from the correspondence which of these two words Mr. Vorstman, in the result of the interview with the State Secretary, was in a position to cable to his chief at Hamburg. In reply to questions put to him in the witness-box on this subject, Mr. Vorstman who, throughout his examination, seemed to be very anxious to shield Dr. Leyds, replied, "I "never gave him a share. I communicated the contents of the letter to Dr. "Leyds, and as far as I can remember he must have corresponded with Mr. "Philipp direct about it, but so far as I know he never got that share." Mr. Alberto Philipp, however, in his evidence admitted that Dr. Leyds had received this share.

A. 2288.

A. 2555-2560.

National Bank shares speculation.

A. 2243–2252.

73. Another affair which may be mentioned in this connection was a speculation in the Transvaal National Bank shares, involving the purchase of about £6,250 worth of shares, and bringing to Dr. Leyds a profit of a few hundred pounds. Means for this venture were provided by a bank credit obtained from Mr. Max Philipp, or, to use Mr. Vorstman's own words, "Mr. Philipp got the credit and we (*i.e.* Leyds and Vorstman) speculated "with it."*

A. 2248.

Minor presents.

D. 5. Letters of Aug. 6th and Oct. 23rd, 1896.

A. 2291-2304.

74. It is unnecessary to dwell upon the references in Mr. Philipp's letters to Christmas presents of some value which he was in the habit of sending to influential personages at Pretoria. It is, however, worth mentioning that President Kruger himself accepted a statuette worth about £40, but declined a pedigree bull and cows worth several hundred pounds, which had been bought in Europe out of the funds of the company and sent out for his acceptance. This refusal was made in the presence of the Executive Council. It does not, however, appear that this attempt—which he saw through and baulked—to "influence" the President aroused in him any resentment against the officials, or in any way weakened his support of the company.

The Government clerk.

D. 5.

75. Although the Chairman of the Dynamite Company placed his chief reliance upon Dr. Leyds, he did not despise lesser friendships. The following letter, written by the Secretary of the Dynamite Company at Hamburg, to Mr. Vorstman on the 4th of August, 1896, shows that, so long as the transaction was private, the chiefs of the Company were not adverse to securing the assistance of a Government Clerk. They wrote, in English:—

> "Referring to your official letter of 4th July, we shall thank you to make in future similar information always by a private letter to us, as we do not wish that such correspondence is passing (*sic*) through the hands of the whole staff of the Office. Contrary to what we wrote you in our to-day's official letter, we are willing to acknowledge the allowance you have granted to the Government Clerk."

Payments to the Press.

A. 2590-93.

A. 2631.

76. Pains were taken to conciliate or convince the Press. Mr. Alberto Philipp said in his evidence that a Transvaal newspaper, the *Standard and Diggers' News*, received a sum amounting, he believed, to £50 a month from the Company, and that other sums may have been received by another paper called the *Volkstem*. He mentioned also a payment made to a Dr. Gehl, a correspondent of a German paper. "He wrote an article in "opposition to the Company, and I went to see him, and he said he had to "make his living. I tried to get him on our side, and he got this money. " . . . . He only wrote one more article of a different tone, and then "he went away."

Payment to Mr. Rissik.

77. The cultivation of scientific experts in the service of the Transvaal

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* Mr. Vorstman was examined on the 22nd and 23rd October at Pretoria, and he had ample opportunity there to correct or add to his testimony. On the 24th December a sworn declaration amending his evidence was received from him, which is now printed in the Appendix. Obviously little weight can be attached to a document produced so late in the day, but, for what it is worth, it corroborates the inferences which we have drawn from the correspondence as to the association of Dr. Leyds with the officials of the company and the financial consideration which he received from them.

D. 9.

Government was not neglected. Mr. Gerhardus Rissik was at one time a clerk in the service of the company, and then, in succession to Mr. Kriege, also an ex-official of the company, became a Government Inspector of Explosives. The salary of his predecessor in this office had been £1,200 a year, but this, when Mr. Rissik was appointed, was reduced by the Government to £1,000. The Company, however, made up the difference by paying him £200 a year. Mr. Rissik's duties involved inspection of explosives and the factory, the execution of dynamite regulations, the law about transport, storing, and safety. But there was, said Mr. Alberto Philipp, "really "nothing in it, and our making up the difference in his salary was a pure act "of friendship." A. 6238–2651. A. 2648.

78. A far more important friend of the Company was Mr. Klimke. This gentleman had at one time been appointed by the Government to buy the explosives in Europe, and was, from the year 1893 or 1894, State Mining Engineer to the Transvaal Government. He had been a strong opponent of Mr. Lippert's original concession, but took a different view of the monopoly when in the hands of the Company. We have already mentioned (paragraph 59) the consultation in London in April, 1897, between Mr. Klimke, Mr. Philipp, Dr. Leyds, and Mr. Vorstman, of which one "tangible result" (Mr. Max Philipp wrote to his son) was the appointment of Mr. Klimke "to obtain information as to European and American prices, not in "the name of the Transvaal Government, but through me, to prevent the "manufacturers being instructed beforehand by the Beit and Barnato Com-"panies to quote cheap prices, the difference of which would be made up by "these people in order to ruin our Company." We have mentioned also Mr. Klimke's participation in the not very successful gold syndicate speculation organised by Mr. Max Philipp in 1896. Mr. Klimke appears to have reaped more substantial benefits. On August 18th, 1898, Mr. Max Philipp writes from Berlin to his son, with reference to a recent debate in the Volksraad on the dynamite monopoly, "Klimke spoke brilliantly, and we are tremendously indebted to the man for his friendly services." On October 5th, 1898, he writes again :— Mr. Klimke. A. 2215. A. 2214. D. 5. Letter of 22 April, 1897. D. 5. D. 5.

> "As regards Klimke I do not at all mind crediting him with £3,000, as soon as the affair has been accepted by the Volksraad. If I am not mistaken he was granted £2,000 for the current year, but immediately after the first payment he instructed Haeseler not to accept any further payments. This, of course, in no way cancelled the arrangement with him, and the remaining payments, I need hardly say, are always at his disposal. I have no objection whatever, considering his services, to increase the £2,000 of this year to £3,000, of course on condition that we are successful in upholding our claims in the Volksraad, or at least in maintaining the concession."

79. Interesting references are made in the correspondence of Mr. Philipp to various influential Burghers. In his letter of May 13th, 1897, to his son, he says :— D. 5.

> "It seems to me that Dr. Leyds is not so confident as he was before; if not, I do not understand why he should have asked me not once but *several times to approach Jeppe and convince him. What does Jeppe** *know? Has he some influence still?* He has certainly influence with *his brother-in-law or some other members of the Volksraad, but never so much as Dr. Leyds or the President, and that makes me rather hesitate.*"

80. In another letter, however, of May 12th, to Dr. Aufschlager, a Director of the Hamburg Board, Mr. Philipp says, that after two hours' conversation with Herr Jeppe, "I convinced the man that his report was made on a wrong basis, and that we have entirely fulfilled our contract." D. 5.

81. There seems to have been less doubt as to the value of the friendship of Mr. J. M. A. Wolmarans, who was, in 1896, a member of the Executive Mr. Wolmarans.

* Mr. Jeppe was Chairman of the Volksraad Commission which reported adversely to the monopoly in February, 1897.

A. 2583. Council. This gentleman was made a director of the Transvaal Dynamite Company, a position worth about £700 a year. On one occasion also he received, Mr. Vorstman admitted, a gratuity of £500 (or, according to Mr. Alberto Philipp, £1,000) for "extra services" in assisting the Company's interests on the Executive. In spite of these means of livelihood he seems to have been in embarrassed circumstances. Mr. Philipp, in a letter to his son on October 15th, 1896 relates this anecdote :—

A. 2237.
A. 2585.

D. 5.

> "Mr. Wolmarans was a debtor of the Bank" (apparently the National Bank), "and one day (may be two years ago) was hard pressed to pay, without being able to do so. At the time Mr. Lippert paid the money for him and, if I am not mistaken, Mr. Vorstman also paid a portion. Lippert took a promissory note, and a little while ago Lippert received a letter from the said gentleman, asking him either to return the said promissory note, or to credit him with a portion of what he had earned from the agency. Mr. Lippert then destroyed the acceptance and sent it to him. I am reminded of this matter, because I am afraid that something of the same sort may happen again, by our Bank, that is to say, the Bank with which we deal, and whose directors are our managers, giving credit to people there whom we may require for our purposes, and who might then, as in the case of our good Wolmarans, be one day pressed for payment without having the necessary money to pay their debts. Such disagreeable incidents might have a bad influence over the affairs of our company."

A. 2415. The embarrassments of "our good Wolmarans" continued, for on January 28th, 1899, he wrote a letter to Mr. Vorstman asking that although his health did not allow him to attend meetings of the Board he might continue to be a director, adding, "you know I have heavy expenses and every penny is useful."

82. Mr. Pieter Johannes Potgieter was in 1899 Burgomaster of Pretoria. He admitted in evidence (which was corroborated by an official of the Standard Bank), that, at an interesting period to which we shall direct attention, on the 2nd September in that year, he received a cheque for £500 signed by Mr. Vorstman. His first theory of the transaction was that the cheque was given to him by Mr. Vorstman, but he subsequently alleged that it was given to him by some other person for whom he cashed it, but who that person was he could not recollect, since, as he alleged, he frequently cashed cheques. It was, according to him, a mere coincidence that on the 7th September Mr. Potgieter paid £300 to Mr. Jan du Plessis de Beer, a Member of the Volksraad, it being, as he stated, repayment of money which the latter had deposited with him shortly before. Mr. Vorstman, on the other hand, admitted that he had given the cheque for £500 to the Burgomaster, and that if the latter had paid £300 of it to Mr. Plessis de Beer it would not have been a breach of trust.

A. 2743-95 and A. 2801-02.

A. 2390.

The convincing of the Volksraad.

83. We have pointed out the way in which the Transvaal Dynamite Company influenced the Press, and "convinced" officials (high and low) and influential burghers. It is now our duty to show how they employed still more widespread corruption in order to prevent the Volksraad, which always contained a strong body of their honest and determined enemies, from abolishing their monopoly.

D. 5. 84. Writing to his son on April 17th, 1896 Mr. Philipp, after referring to the fact that there was "no prospect of the factory being able to begin work before June or July," and to the advisability of petitioning the Volksraad, with the Government's assistance, for the continuation of the import proceeds thus :—

> "I have had a talk with Herr Lippert on the subject, and he will give me a letter to the President, while I will give Dr. Leyds my reasons personally, and you must then take care that the Volksraad members who voted against it at the time accept this amendment of the contract now."

85. On July 23rd, 1896, Mr. Philipp, writing from Paris to Mr. Vorstman, said that— D. 5.

> "Everything must be done to get the Volksraad to agree to our legitimate wishes, in particular to allow us in the first place, to keep a stock always on hand, enough let us say for six months' consumption. If this stock cannot be produced in our factory by the constantly increasing consumption preventing us from working so as to create such a stock it must be imported. . . . . I think that we agreed that you were to leave no means unemployed, be they what they might, to get our wishes carried in the Volksraad, and that it was, in fact, only in the interests of the Government itself that this should be done. I am not at all in sympathy with Alberto's idea of deferring taking any action in the matter till our time is up in November, because I am afraid that the Government would then, and rightly, answer that we let the time when the Volksraad was sitting slip by unused, and that the Government has no authority now to alter our unlucky contract in any way. I beg you, therefore, not to be sparing of money if it be necessary, and debit the Dynamite Company with any expenses that have to be incurred, or are incurred, as I have already come to an arrangement about this with Dr. Autschlager. . . . I am specially sorry to gather from your letter that the Volksraad persists in the same opposition as before, which is not exactly encouraging for us; still, these gentlemen are very amenable to advice of the chinking kind (*klingendem rathe sehr zugänglich*), and as I have said above don't be sparing of it, so that we may run no chance of a fiasco."

(Underlined in original.)

86. On the same date (July 23rd, 1896) Mr. Philipp wrote to his son to the like effect: D. 5

> "You and Vorstman must take care that we have a majority in the Volksraad with us, let it cost what it will, so that we may have the further import for years ahead. Naturally the 'let it cost what it will' must be taken with limits and you need only wire me one word how much has to be spent for you to get my approval by wire, but something must be done to make our demands succeed."

87. In another letter to Mr. Vorstman on August 6th, Mr. Philipp, referring to a resolution recently carried in the Volksraad against Government, repeats a favorite phrase: D. 5.

> "I am disposed to look upon that as a bad omen for our petition, and I am afraid that these fifteen votes may turn the scale, when the petition comes on, unless Dr. Leyds is very energetically supported by the President, or you apply chinking arguments to these gentlemen (*klingende gründe anwenden*)."

88. The following remarkable passage occurs in a letter written from Hamburg by Mr. Philipp to his son on the 2nd September, 1897, after the adverse Report of the Industrial Commission, which he criticises in detail: D. 5.

> "As far as I am concerned the matter is finished, and, I repeat, we have carried out our contract, and no one can touch us. Dr. Leyds shares this opinion, and so does the President. It is true that if the majority of the Volksraad votes against us we must go to law. But I have already told you in my earlier letters to beware of surprises. Money is at your disposal; and it is better to sacrifice some money, even though we feel we are in the right, than afterwards to fight against a Volksraad resolution, which fight will cost us more than the few thousand pounds which it may perhaps cost to avert this Resolution."

(Underlined in original.)

89. As we shall proceed to show, steps were taken in Europe to provide the money, and a year later, on August 18th, 1898, Mr. Philipp could write more cheerfully to his son—although the battle was far from being at an end: D. 5.

> "It is to be hoped that our affair will now at last be settled, and I am writing by to-day's post to Vorstman that, within a few months, I expect to get the definite news either that our company has got its

discharge * from the Volksraad, or that the Volksraad has agreed to an extension of the time."

90. The urgency to the Dynamite Company of obtaining from the Volksraad an acknowledgment in some form of the validity of the Concession is well illustrated in a subsequent letter of Max Philipp to his son, written at St. Remo on October 5th, 1898 :

D. 5.

> "As to our dynamite concession" (he says), "I have written at length to Vorstman and also as to the unfavourable reception of Leyds in Berlin (if true). It must be your chief and exclusive object to get this business settled as quickly as possible, for before we know where we are there will be war between England and the Transvaal, and then—I would not like to fall into the hands of the English before our Concession has been recognised by the Volksraad, and we get either a simple discharge from our liabilities, or else an extension of the Concession. In either case England will recognise the Concession, and then we can look to the future without fear. You must therefore hurry up, and see that Smuts hands in his report immediately (of course only a favourable report) so that the Volksraad can give it its blessing."

(Underlined in original.)

The report referred to in this letter is, of course, the legal opinion given to the Transvaal Government by Mr. Smuts, the State Attorney, which we have mentioned in paragraph 54 of our report.

The American agreement.

D. 5.

91. We desire, at this point, to cite a passage from a letter written by Mr. Philipp to his son on the 2nd September, 1897, because it shows the resolute character of his policy, the identification of Dr. Leyds with it, and the point of view from which the mining industry was regarded in these circles. The American agreement was one entered into by the great Nobel European combination of which the Transvaal Company was really a local branch, with a similar group in the United States, and some account of it was given to us in evidence by Mr. Quinan, a gentleman who has a large knowledge of the dynamite industry. The passage in Mr. Philipp's letter is as follows :—

A. 296-303.

> "Vorstman and Dr. Leyds promised to cable the news of the ratification of the American agreement immediately it arrived. This agreement is now duly made, and I imagine that the news was already published yesterday in the Johannesburg newspapers that one of the provisions is that the Americans have agreed to send no more exports to South Africa either directly or indirectly. That will be my answer to the observations of the Industrial Commission, where these gentlemen say that they are of opinion that no ring or combination for the sale of explosives will be effected. The American agreement completes the ring, and the day that the monopoly in the Transvaal expires the price there will no longer be 85s. but 160s."

A. 297.

It may be mentioned that, according to Mr. Quinan, other conditions of this international agreement were the evacuation of Australia by the Americans, and the cession of Mexico to America; Nobels, on their side, also withdrawing a menace to invade the United States.

Provision of Secret Service money by European Council of Advice.

92. Pending the success of these world-embracing arrangements, the Dynamite Company proceeded with the minor operation of corrupting the Volksraad, so far as it was necessary to do so in order to secure a majority. Ample means to carry into effect Mr. Philipp's instructions, "cost what it will," were provided. Among the papers found in the office of the Company at Pretoria are copies of certain Minutes of the proceedings of the "European Council of Advice," which was in fact the governing power of the Company. These Minutes are as follows :—

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* *I.e.*, discharge from liability on account of the invalidity or breaches of the Concession. (*Unserer Gesellschaft decharge vom Volksraad ertheilt wird.*)

Date of Meeting.	No. of Minute.	Terms of Minute.
16th Nov., 1897.	453	"The Chairman and Dr. Aufschläger having reported that they had disbursed in the interest of the Company £9,100, it was resolved that this amount be charged to the 'Special Charges Account.'"
28th April, 1899.	540	"The sum of £10,000 disbursed by Mr. Max A. Philipp in pursuance of Minute 465 has been debited to 'Special Charges Account.'"
Ditto	546	"Resolved with reference to Minute 465 that the Chairman be authorised to incur whatever further expenditure he may judge desirable in the Company's interest not exceeding £10,000." "The amount of his expenditure under this head to be declared by him at the end of the year and debited to 'Special Charges Account,' but not to be deducted in calculating the Government's share of profits."
24th April, 1900.	638	"Resolved that a sum of £20,000 has been disbursed by Mr. Max A. Philipp in pursuance of Minute 589, and resolved that the same be debited to 'Special Charges Account.'"
Ditto	639	"Upon the Chairman's instructions that he would wish to propose the payment of certain further remunerations and gratuities at a later date, resolved, in order to meet any amounts to be voted under this head as well as other items which may arise in connection with the present position, that £10,000 be carried to the credit of 'Suspense Account,' and to the debit of 'General Manufacture and Trading Accounts.'"

93. The following sums therefore would seem to have been spent:—

	£
Before 16th November, 1897	9,100
Before 28th April, 1899, under a Minute (465) of 1898	10,000
Before 24th April, 1900, under a Minute 589	20,000
Total	£39,100

94. It appears, therefore, to be certain that in 1897 £9,100, in 1898 £10,000, and in 1899 £20,000 were placed at the disposal of the Chairman and Dr. Aufschlager for disbursements "in the interests of the Company" and charged to special charges account, or that the Chairman's expenditure of these sums was ratified.

Expenditure of Secret Service Money.

95. Dealing with these sums in order, we find that in November, 1897, the Industrial Commission having reported adversely to the monopoly on 4th inst. a resolution was passed in the Raad instructing the Executive Council to lay the matter in the hands of the State Attorney and other lawyers.

96. On the 5th November, 1897, Mr. Vorstman, who was a Director of the Netherlands Bank, Pretoria, draws from the Bank £600 in notes and £4,700 in notes and gold, that amount being covered by an acceptance of Mr. M. Phillipp, which came forward on the 8th November, and which Mr. Vorstman anticipated.

A. 2317-2327.

97. Mr. Vorstman admitted that this sum was drawn out of the Special Charges Account, which was in fact a Secret Service Fund, the disposal of which had been left by the Board to the Chairman and Dr. Aufschlager, and that he had employed people by means of it to influence public opinion, but on his stating that he never gave instructions that the members of the Raad should be paid, he was asked the following questions by the Chairman.

A. 2328-29.

Q. Do I understand you to say that you handed over this cash, notes and gold, to some person, giving him *carte blanche* to influence public opinion? Is that what you did?—No answer.

Q. If that person did in point of fact influence members of the Raad, was he only carrying out your instructions?—*A.* Well, I did not do so.

These answers appeared to us not satisfactory. When one individual hands money to another with instructions to influence public opinion, professed ignorance of the precise methods used cannot alter the responsibility incurred by the mandate.

A. 2332-41. 98. In 1898 £10,000 was used by Mr. Vorstman in precisely the same way; that is to say: In the period rendered critical for the monopoly by the adverse opinion of the majority of the lawyers consulted by the Raad in consequence of the Report of the Industrial Commission, cash in notes and gold to the amount of £10,000 was at various dates in 1898 drawn out of the bank by Mr. Vorstman, handed over to an agent whose name he refused to disclose, and *carte blanche* given to him to expend it in the Company's interests.

99. At the end of August, 1899, the existence of the monopoly was in greater danger than ever. On the 6th February, 1899, the Government at Pretoria received Mr. Chamberlain's despatch of 13th January, protesting against the monopoly as a breach of the London Convention. In August war was imminent, and to many persons at Pretoria seemed to be inevitable.
D. 9. The party among the burghers who were opposed to the monopoly desired to clear their consciences before the war began, and the Government of the Free State intimated that they did not desire to fight for it. On the 15th August the Volksraad Concession on the Dynamite Monopoly reported in favour of its continuance, subject to certain modifications. The question remained whether the Volksraad would adopt the report, and by so doing validate the legal position of the Company. How critical the Company's situation was at this moment, is vividly shown in a letter written on the 19th August, 1899, by Mr. Vorstman to the European Office.

D. 11 "We reckon," he writes, "at the present moment that there is a majority in the Raad in favour of the Majority Report, but we are not certain that this will remain so, as in the few days from now till Wednesday great changes may take place. . . . Although we expected a hard fight from the Opposition, we were not afraid of a satisfactory result being come to, viz., the majority of the members being in favour of the Majority Report, but in the meantime a new difficulty has cropped up. We have been informed that the Government received a telegram from President Steyn of the Free State, in which he points out that the adoption of the proposal would be against what Mr. Fischer understands has been told him during his stay here, which seems to be that the Volksraad would not cancel the contract, but that the matter would be referred to the High Court, and that it must be well understood that, if war is going to be declared by Great Britain against the Transvaal, the Free State burghers must not be expected to take up arms over the dynamite monopoly. This information has caused quite a flutter in Government circles, and will be a strong point in favour of our enemies."

100. Evidently it was time that the agents of the Company should strike the decisive blow for which they had instructions and means. At this conjuncture Mr. Vorstman received from Europe the sum of £20,000 to which we have
A. 2689. (Mr. Aiken's Report.) already referred. It came from the Nord Deutsche Bank of Hamburg, through the Amsterdam Office of the Transvaal National Bank to Pretoria, on the 26th August, 1899.

101. On the 27th August the Volksraad adopted by a majority of 18 to 9 the Report of the Commission.

In connection with the report of the Volksraad Commission in August, Mr. Vorstman was examined as follows:—

A. 2345-49. *Q.* You knew that these reports had come before the Raad for adoption or ratification?—*A.* Yes.

Q. And did they, in point of fact, come before the Raad later on in that month?—*A.* Yes.

Q. Did you use that £20,000 secret service money for bribing certain members of this Commission?—*A.* I do not know

Q. Do you know, as a fact, whether they were bribed?—*A.* That I do not know.

Q. Do you mean that you only handed over the cash to the agent in question without giving him definite instructions?—*A.* There was not one man only, but several men whom I employed.

The matter is of such importance as to be worth more detailed elucidation.

102. From an account at the Netherlands Bank, Pretoria, entitled L. G. Vorstman's Special Account, 8th October, 1900, it appears that between 2nd February and 4th August, 1899, Mr. Vorstman was credited with sums amounting to £3,050. On various dates between 20th March and 4th August Mr. Vorstman drew from this account in notes and gold £1,205. On 26th August, the day before the Raad ratified the report, £18,267 was paid out to Mr. Vorstman in notes and gold, and £1,732 10*s.* paid in, these two amounts representing together the sum of £20,000. A. 2689

103. In addition, between August 28th and 16th October, £2,700 was drawn out by Mr. Vorstman in notes and gold. These drafts, with certain other payments not traced, left a debit balance of £471 17*s.* 3*d.* against Mr. Vorstman, which was wiped out by transfer through the Dynamite Company's own account by cheque. So that in this year, the "severest crisis through which the Company had yet to pass," Mr. Vorstman appears to have handled in Pretoria no less than £22,172 10*s.* in notes and gold, of which £18,267 10*s.* was paid to him on 26th August, the day before the Raad finally yielded on this all important matter, to the views of the Company. Mr. Vorstman was "not prepared to deny" that on that very day he handed to one Mr. Breytenbach, a person who frequently visited at Mr. Kruger's house and was acquainted with many members of the Raad, £3,500 in cash. For this cash Mr. Breytenbach obtained from the Netherlands Bank a draft on the Vryheid Branch and deposited it there early in September, and a further sum of £1,990 was also transferred to him by wire on 26th August from Pretoria. This money, diminished by some unimportant drafts, remained to the credit of Mr. Breytenbach till May, 1900. A. 2379.

104. Mr. Breytenbach was stated by Mr. Bertram, the Bank Manager at Vryheid, to be a man of little or no means; he appears however to have made no secret of the origin of this extraordinary access of fortune, stating to Mr. Bertram "that these amounts were merely crumbs he had picked up for his services and the influence he had used on the Dynamite Bill." To Mr. Emmett, the Chairman of a Board of Trustees in Vryheid, he further stated that he had received a large sum of money on account of this work, during the session of the Raad in August, 1899, that he had received it from Mr. Vorstman, and "that it was to be used to influence members of the Raad," and he particularly mentioned Messrs. Stoop, Barend Vorster, and Louis Botha, as members whom he had bribed. It is to be noted that these three gentlemen signed the majority report of the Commission of August, 1899. A. 2702. A. 2705. A. 2665 A. 2668-69 A. 2675.

105. These statements, made by the agent of the Directors in Pretoria, who had intrusted him with money and given him a free hand to use it in the interests of the Company, are evidence against those Directors, but not being corroborated by documents they should be regarded with extreme caution as affecting the persons alleged to be bribed. That Breytenbach did not exceed his instructions is plain from the following passage in the examination of Mr. Alberto Philipp:

"*Q.* We were told yesterday how £9,000 was granted in 1897, £10,000 in 1898, and £20,000 in 1899. You were in Europe in 1899, and I suppose you knew of the £20,000 being granted as Secret Service Money for transmission here?—*A.* Well, I did not know it was for transmission here. A resolution was passed and the Chairman was authorised to dispose of a certain amount. A. 2604-19

"*Q.* You knew of that?—*A.* Yes.

"*Q.* When did you arrive here in 1899?—*A.* It would be about the month of August.

"*Q.* Let me remind you. War broke out in October. You knew there was a great question between your opponents and yourselves. Your opponents alleged that the Raad had never authorised this contract?—*A.* Yes.

"*Q.* War being imminent it appeared to be vital to get some recognition out of the Raad before war broke out?—*A.* Yes, at that time, we hardly expected war.

"*Q.* You were aware of the importance of the occasion?—*A.* Oh yes

"*Q.* Did you confer with Vorstman as to the best means to be taken to get the authority of the Raad?—*A.* Yes.

"*Q.* Did you agree with him to employ this £20,000 in whole or in part to convince the members of the Raad?—*A.* I agreed with him to convince the members.

"*Q.* You have told us the methods with which in 1896 you thought it right to enforce that conviction? Do I understand that you arranged with Vorstman as to the way in which the Raad members should be persuaded, leaving the details to him?—*A.* Yes.

"*Q.* With a clear understanding that the money should be so used?—*A.* He would do exactly as he thought fit.

"*Q.* You were the confidential correspondent of your father and you received instructions again and again in this matter. Please give a plain answer. Did you not know perfectly well that this money which your father had directed to be spent was going to be spent in bribing members of the Raad?—*A.* Not all.

"*Q.* But some?—*A.* Yes.

"*Q.* Do you know a man named Breytenbach?—*A.* No.

"*Q.* Have you heard of him?—*A.* I heard of him yesterday for the first time.

"*Q.* If he asserts that he was given money to bribe the Raad, and did so, that would be in conformity with what you have said just now were your father's instructions?—*A.* If he says so, but I did not give it to him.

"*Q.* Mr. Vorstman did not deny that he gave him money, and if he spent it in the way that I have put to you, viz., in bribing members of the Raad, that would be in conformity with your father's instructions?—*A.* If he says so, but I did not give it to him."

Conclusions.

106. The evidence satisfied us that Dr. Leyds received from certain Directors of the Company shares and financial consideration, and that Mr. Wolmarans received money, intended to influence these two members of the Executive Council in favour of the Company's objects, and that other sums were paid to Mr. Klimke, the expert adviser of the Government and Council, with a similar intention. We also are satisfied that money to the amount at the least of £39,100 was placed by the authority of the European Council at the free disposal of Mr. Max Philipp and Dr. Aufschlager, in the years 1897, 1898, 1899, for use in the interests of the Company, and was transmitted to Pretoria by those gentlemen for purposes of corrupt expenditure, and that it was there used in bribery by the local Directors, Messrs. Vorstman and Alberto Philipp, and especially in the bribery of members of the Raad.

107. In the light of these facts many circumstances hitherto unintelligible become clear. We are able now to understand how this Company working under a contract—itself a breach of the Regulations of the Raad—broke that contract; how it amassed and consumed in the manner above described vast profits, of which the State obtained in comparison a beggarly share, and yet induced the Government to condone its default, and the Raad to adopt that condonation. Without this condonation the Company has no legal title to the monopoly, and we are convinced that no right or title giving the Company any claim to consideration at the hands of His Majesty's Government can be founded on acts of the late Government of the Transvaal and the Raad which were induced by recent and extensive bribery. We therefore recommend that His Majesty's Government should decline to recognise this concession. The Company, in our opinion, should have no advantages in the competition for the manufacture of and trade in explosives in the Transvaal other than those which it has secured by the establishment there of its factories and its first occupation of the field of industry.

NATIONAL BANK CONCESSION.

1. On the 5th August, 1890, the Government of the South African Republic in accordance with a resolution of the Executive Council granted subject to the approval of the Volksraad a concession for the formation of a National Bank to Messrs. Labouchere Oyens & Co. of Amsterdam and Dr. Wilhelm Knappe of Berlin. The Concession was to run for 50 years subject to the right of the Government to revise it after 25 years, and it included provisions for the establishment of a State Mint which the Bank was to lease and work on specified conditions. The Volksraad accorded its approval to the Concession and limited the liability of shareholders in the proposed Bank by resolutions of the 9th August, 1890. A Banking Company was constituted by Articles of Association, approved by the Government at Pretoria on the 27th January, 1891. These Articles contain a Clause, No. 74, dealing with Directors' contracts, couched in an unusual form open to some objection, but are in other respects substantially in accordance with the requirements of Section 9 of the Agreement with the Government. The concession was formally handed over to the Company by the holders on the 4th April of the same year, and business was begun on the 15th April.

History of the Concession. D. 1. D. 2. D. 3. D. 4. D. 5.

2. The Capital authorised by the Concession was £4,002,000 in £10 shares. Of these, two hundred were Founders' shares, carrying rights to a preferential allotment of ordinary shares, and a participation in profits earned in excess of the shareholders' cumulative 10 per cent. dividend.

The first authorised issue was £1,002,000, of which £502,000 was issued in May, 1890, in fully paid up £10 shares; the remaining £500,000 was issued in 1895 and 1897. The £2,000 Founders' shares, the interest of the Government in the profits of the Bank, and the right of the shareholders of the first issue to cumulative dividends were extinguished in 1899 in return for £100,000 fully paid up shares, whereof £50,000 were distributed to the Founders, £25,000 to the Government, and £25,000 to the shareholders.

D. 6. D. 7 and 8

These alterations and the addition to capital had the approval of the Transvaal Government, conditionally on its obtaining an amendment of the concession, whereby the 25 years' lease of the Mint should be terminable at six months' notice. They were assented to by the Volksraad on the 15th June, 1899.

D. 9 and 10. D. 1, para. 5. A. 790.

3. The Government had subscribed to the first issue of capital and is the holder of £125,000 shares, plus its *pro ratâ* proportion of the 1899 allotment to original shareholders, £2,500.

There is a small reserve fund.

	£
Subscription Original	100,000
1899 Allotment	25,000
	2,500
	£ 127,500

4. The Bank has its head office at Pretoria, agencies in London and Paris, branches at 31 places within the Transvaal, and 5 in other parts of South Africa. Except in 1892 when owing to special losses no distribution was made, the Company has paid annual dividends of 5 per cent., 7 per cent. and 10 per cent. As far as appears from the published accounts it has in recent years been prudently managed and does a considerable business. But this was not the case in the early years of its existence, when its management was called seriously in question in the Volksraad. In 1893 that body passed a Resolution animadverting in decided terms on the Bank's administration in connection with a particular grant of credit "to a greater amount than 10 per cent. of the paid-up capital of the Bank," a breach of the Concession which might have involved cancellation, and required the Government to report on the whole subject within the session. In the debate, the Bank was defended by its Syndic, Dr. Leyds, who was also State Secretary, but the report which he laid before that body in his double capacity, did not give satisfaction, and was laid over for consideration in

D. 11. D. 12 D. 1, para. 12 (6). D. 13.

the ensuing session. But nothing was done in the Volksraad, though the complaints were followed by changes in the management.

D. 1. Terms of the Concession.

5. The concession contains the following provisions affecting the interests of the public :—

It grants the bank the right to issue Legal Tender Bank Notes of £1 or more, for a period of 50 years,* while bank notes issued by other banks under the provisions of the ordinary Act relating to the banks in the South

D. 14. African Republic, No. 22 of 1892, are not legal tender.

The right of the Government to issue its own notes is not in terms negatived but in restraint of that right it is provided that if it does issue

D. 1, para. 26. notes it shall "forfeit its share in the profits of the bank unless such issue is covered in full by gold;" but the intention of this condition to deter the Government from issuing its own notes has become inoperative, the Government having for the consideration of £25,000 in paid-up shares of the bank disposed of its contingent right to profits.

D. 14. The security ordinarily required within the Transvaal to cover an issue of bank notes, a specie reserve of 33⅓ per cent. of the face value, and assets within the State for the balance, is reduced in the case of the bank's notes to a specie reserve of 33⅓ per cent. of the face value less any debt due by the Government to the Bank.

D. 1, paras. 28, 29, 25, and 29. The notes of the National Bank are freed from stamp duty and are the only notes issued by banks that are receivable at the Government offices, and the Government has bound itself not to extend these two privileges to any other bank. The bank was exempt from the licence duty imposed on its rivals of £150 for every branch.

D. 1. para. 12. The bank was given a preference, the nature of which is not very clear, for the execution of the foreign financial transactions of the Govern-

A. 848. ment of the South African Republic, but it was contended by the representative of the bank that this clause meant no more than that in case equal tenders for a foreign financial service were made by the National and other banks, the National Bank should have the preference.

D. 1. paras. 5, 13. 6. On the other hand the Government has the right to be allotted one-tenth of all capital issued, and to claim advances on a large scale at 6 per

D. 1, para. 8. cent. interest; it appoints two Directors, approves of half of the other

D. 1. para. 18. Directors and of the Managers, and has certain powers of supervision which it can exercise through a special officer called a Syndic, whose salary the bank must pay; and it has the advantage of receiving its revenue

D. 1, para. 4. and paying out its funds at 31 places within its dominions without cost

A. 801, 2, 3, 4. to itself.

D. 1. para. 18. The office of Syndic, to which was necessarily attached great power, was open to a kind of abuse of the nature of which the evidence laid before us afforded an instructive example. In the year 1887 State Secretary

A. 833. Dr. Leyds bought a house for £1,350; in 1891 having become Syndic of the

A. 839. Bank on a salary of £500 a year, he sold his house to that institition as a residence for its Mint Master for £4,500, its value at that time, according

D. 15 to the present Manager of the Bank, having been £3,000 to £3,500. The Bank has been saved from serious loss in this transaction only by the general appreciation of property since 1891, and by the dubious process of charging the Mint account, in which the Government had a beneficial interest, with a high rental for the house.

7. The precise terms used in the Concession to prescribe the duties of the Bank and its privileges in regard to keeping the Government's local banking account, if indeed any privilege was thereby conferred, are as

D. 1. para. 4. follows :—"The Bank shall do the banking business of the Government (be the banker of the Government) without charging any commission, and shall effect all other internal affairs of the Government (viz., transport of gold, &c.) for a remuneration in proportion to the work attached to it." . . .

It does not appear to us to be clear that this section imposed on the Transvaal Government the obligation to do its local business exclusively

* This was subject, as were all the provisions of the Concession, to the condition that the Government retained the right of revision after 25 years.

or indeed at all through the National Bank, though it obviously did impose on the Bank the obligation if so required to transact the business of the Government on specified terms; but it is probable that the agreement was entered into by the Bank in the view that the Transvaal Government had the intention of doing business with that institution.

8. Exception was taken by the other banks doing business in the Transvaal and by Mr. Emrys Evans, Controller of the Treasury of the Imperial Military Government of the Transvaal, to all these special privileges. Objections D. 16, A. 154, 1024.

9. The Concession ceded to the Bank the exclusive right of minting gold and silver and bronze coins for the South African Republic for 25 years from the date of commencement of operations. State Mint. D. 1. para. 30. and para. 30 (*d*).

10. The following are the principal conditions of the grant:—

The Mint was to be built at the expense of the Bank and its ownership transferred to the Government, by whom it was to be leased back to the Bank for 25 years, subject to the right of the Government to terminate the lease at the end of 15 years by one year's notice. The Bank was to pay a rent of £500 a year for its use and to maintain it in proper order. On the expiry of the lease the Mint and its belongings were to be paid for by the Government at a valuation. D. 1, para. 30 (*a*) (*b*) (*c*) (*m*).

The Bank was to coin all gold tendered to it for coinage by the Government or the public, charging a mintage of 3 per cent., and as much token coinage as the Government might require it to strike, surrendering out of the net profit on the token coinage 30 per cent. to the State. Due provision is made for supervision of the operations of the Mint by Government officers, and for the keeping of proper accounts. D. 1, para. 30 (*h*). A. 1027. D. 1. para. 30 (*c*) (*g*) (*j*) (*k*).

The standard weights of and other requirements for the coinage are laid down in the Mint Law for the South African Republic, No. 14 of 1891, and there is no complaint that these have not been observed, but the bank has been charged with a breach of duty in refusing to redeem with gold the token coinage tendered to it. It denies that it has incurred this obligation of redemption, and we have been unable to find in the Law or in the Concession that any such obligation rests upon it. D. 17.

11. The lease of the Mint has not proved so profitable either to the bank or to the Government as might have been expected, the gross profit on the silver and bronze coinage of £169,300 returning only net profits of £18,161 and £26,000 odd to the Bank and the Government respectively up to 1896, beyond which date there has been no settlement, and it was perhaps in view of this that the Government so easily obtained in 1899 the right to terminate this portion of the concession by a notice of six months, a right hampered by the liability to make good to the bank the cost of the Mint and its accessories, returned by that institution at £39,000. D. 18. A. 769, 7

12. In quoting the above figures as to division of profit we desire to guard ourselves against being understood to accept them as correct. There is at least one charge made by the Bank, that for interest on the cost of erection of the Mint, which in our opinion cannot on a fair construction of the terms of the Concession be brought into account against the Government in the process of computing the division of profits. The Concession lays down *totidem verbis* that "the Mint shall be established . . . by the Bank at its own expense . . . . and immediately after it has been completed shall be transferred to the Government as its property," the Bank paying a yearly rent of £500 for it. The cost of coinage may perhaps be construed to include the rent but not also the interest on the cost of erection, to add which is in effect to charge rent twice over. D. 1. 30

13. We understand that His Majesty's Government have already been advised that this Concession is not in breach of any Convention; in our opinion it was granted with due regard to the law of the Transvaal and its conditions have been in substance observed, but we think that its maintenance in its present form may affect prejudicially the interests of the public, in the following among other respects. Validity of the Concession.

14. The grant to this Company of the exclusive (as against other Banks) right to issue Legal Tender notes was made for inadequate consideration, and the important advantage that might have been secured to the Revenue has been lost, and this source of loss is of a continuing character. The exemption of the Bank's note issue from the ordinary Stamp Duty is open to the same objection, and the prohibition of the receipt by the Government offices of notes other than those of the National Bank, although according
A. 784, 845, 922. to the Manager of little advantage to the Institution proposed to be benefited, is inconvenient to men of business.

A. 227, 230. 15. The special exemption of this Institution from the annual licence duty, though invidious from the point of view of other banking companies, was probably advantageous to the public, the Bank being thereby enabled to open agencies in many places to which banking facilities would not in the other event have been extended.

CONCLUSIONS.

Conclusions. A. 788. 16. The principal advantages to the Institution concerned were no doubt three; (i.) the right to issue its notes, estimated by the Manager to be worth £10,000 a year; (ii.) the keeping without security and without payment of interest thereon of the Government balance, in the time of the late Government about £750,000; and (iii.) the prestige attaching to the position of the Government's Banker. Of these the last two are not clearly maintainable under the Concession, while the value of the first would be much impaired should the Government decide to have its own note issue. The circumstances therefore appear to us to be such as would provide a favourable opportunity for discussion and compromise, should it be decided by His Majesty's Government that the Concession cannot be in its present form continued.
A. 808, 1016.

HATHERLEY DISTILLERY (LIQUOR) CONCESSION.

History of the Concession.

1. At various dates between October, 1881, and July, 1883, the Government of the South African Republic gave to a Mr. Alois Hugo Nellmapius concessions to found a distillery, make sugar, &c., and extended and varied those concessions. As a condition of extension, a factory for the manufacture of glass, and cooperage works were required to be erected. D. 1, 2, 3.

On the 22nd June, 1885, in substitution, or rather confirmation of, so much of those concessions as applied to the manufacture of spirituous or strong drinks, the Government granted him the concession now existing. D. 4.

Terms of Concession.

This confers on its holders the *exclusive* right for a period of 30 years, ending 30th June, 1912, to manufacture spirits from all kinds of products of the South African Republic, except fruits and grapes. The Concessionaire was required to pay £1,000 per annum, and was to be free from all other taxation in respect of this manufacture, but to be restricted to selling wholesale.

The grant was authorised by resolution of the Volksraad of 17th June, 1885.

D. 5.

2. On the 23rd June, 1885, Mr. Nellmapius ceded this concession to a small Limited Company, in which he held a material interest, called the Erste Fabrieken in de Zuid Afrikaansche Republiek Beperkt. This Company went into liquidation in 1891, and in November, 1892, transferred its concessions for a "due and proper consideration" to the present holders, the Erste Fabrieken Hatherley Distillery, Limited, by which they are now carried on. The due and proper consideration would appear to have been about £122,000.

D. 6.

D. 7.

A. 1240.
A. 1237.
D. 8.

3. These changes of ownership are stated to have had the approval of the Executive Government and of the Raad. The concession was recognised by Art. 9 of Law 19 of 1898, under the present ownership.

Operations under the Concession.

4. The Limited Company now working the concession has erected a glass factory in addition to its distillery. It has a paid up capital of £475,000, and a reserve fund of £107,234, to set against the large sum £116,319 at which its concession and good will now stand in its books.

It has sold as much as 386,000 gallons of spirit in a single year, but the average output of the past three years has dwindled to 101,000 gallons. The Manager of the Company attributes the reduction to the importation of untaxed spirits from Mozambique under the treaty with Portugal,* and to the provisions of the Liquor Law of 1896 prohibiting sale to coloured persons. No dividend has been paid since 1896.

D. 9.
D. 10.
A. 1247.
D. 11.
A. 1266

Objections.

5. Objection was raised to the continuance of the privileges of this grant by the Imperial Military Government, the Chamber of Mines, and the Chamber of Commerce, on the ground that it is against public policy, and especially that it interferes with the prerogative of the Government by the difficulties it places in the way of raising a revenue from the Excise of liquor.

A. 1243.

Validity of Concession.

6. These objections are, we think, well-founded, but we are of opinion that the Concession was lawfully granted; no evidence that its conditions have been broken was brought before us, and in the absence of such evidence the cancellation of the Concession might involve a claim for compensation.

Conclusions.

7. It becomes important therefore to consider whether its terms are of a nature to prevent the incoming Government levying a duty by way of excise on the consumption of spirits manufactured at the Hatherley

* This is a treaty under which the products of the province of Mozambique are imported free of duty into the Transvaal. It expires in 1902. D. 11.

Distillery, and it is important to note that the Chairman of the Company, who represented its interests at the inquiry in Pretoria, in reply to a question, did not claim that its privileges extended to the point of preventing the imposition of an excise on consumption as distinguished from a tax on manufacture.

A. 1270.
A. 1274.

8. An excise on consumption might follow the ordinary form, in which case it would comprise restrictions on the moving of untaxed spirit, its compulsory storage under the supervision of excise officers, and the levy of a duty on the occasion of its removal from the place of storage on its way into consumption through the medium of the dealers; or it might be modelled on the law of British Guiana, where the amount payable to revenue in respect of a retail licence to sell spirits increases in proportion to the quantity sold; or on the Ceylon system, where the licence to retail is sold to the highest bidder. We are of opinion that any one of these alternatives—and no doubt others might be devised—might legitimately be adopted without impairing the rights of the Concessionaire, and would provide a considerable revenue.

THE IRON CONCESSION.

History of the Concession. D. 1.

1. On the 7th July, 1882, under the authority of a series of resolutions passed by the Volksraad on the preceding day, the Government of the South African Republic granted to Mr. Alois Hugo Nellmapius, of the Hatherley Farm, who in the previous year had been given exclusive concessions to distil spirits and to make sugar, a third concession for the manufacture of iron.

D. 2. A. 3915, 6, 7, 8, 9, 3927. D. 3. A. 3929, 3931.

2. Nellmapius became insolvent, and his trustees on 29th March, 1889, sold his concession for £4,500 to a Mr. John Crosbie Aitken Henderson, who within a month, resold it to the Transvaal Government Iron Concession Limited, for £16,400, plus "18½ per cent. of the entire capital of a limited liability company, to be established in England."

A. 3933. D. 4.

3. In 1895 the Transvaal Government Iron Concession, Limited, went into liquidation, and its liquidator transferred the concession to the Exploring Land and Minerals Company, Limited, "for valuable consideration received therefor" on the 11th June, 1895.

D. 5. A. 3935.

4. On the 30th September, 1896, the Exploring Land and Minerals Company transferred the concession "for valuable consideration received" to the British and Transvaal Financial Company, Limited.

A. 3940.

5. We were unable to obtain a clear account how after all these changes, Mr. Henderson came again into possession of the Concession, but we were informed that the Financial Company is still in existence, and that if Mr. Henderson does not now hold the Concession himself, the Financial Company holds it in trust for him.

Terms of the Concession. D. 1.

6. The Concession was limited for a period of 20 years.

Under its terms Nellmapius was to erect factories and furnaces for the manufacture of various kinds of iron, and the Government of the South African Republic bound itself, "in order to support this industry, to levy an import duty of 2*d.* sterling per pound weight of iron and steel of all kinds" so made, and further "to levy from every person or every company which establishes iron smelting furnaces or iron factories later than Mr. Nellmapius a duty of 1½*d.* per pound . . . ." The imposition of these duties was, however conditional on the quantity manufactured reaching 10,000 lbs. weight of each of the particular kinds specified.

The Government undertook to buy its own iron from the concessionaire, but he was required, on the other hand, to deliver what was wanted for the ammunition of the State Artillery, free of charge.

£500 was to be deposited by Nellmapius on signature of the concession, and payments were to be made by him commencing at £100 a year and increasing by annual increments of £100 a year, the total payable for the 20 years for which the concession was granted being £21,500.

No time was limited by the agreement within which a factory or furnace was to be erected.

Operations under the Concession. A. 3991. Evidence 20th Day. A. 3942, 3. A. 3944.

7. No effectual measures were ever taken to put this concession into operation. No factories have been built, no iron manufactured, and no duties imposed, but the agreement has been kept alive by payments of the annual rent up to July 1898, when we were informed by Mr. Henderson, he paid the £1,700 due on account of the seventeenth year's liability, making the sum received by the Transvaal Government on account of rent up to that date £15,300.

D. 6. Evidence 20th Day, A. 3913.

8. £5,700 thus remained due for rent, after making allowance for the £500 security deposited when the grant began. £1,800 fell due in July, 1899, for the payment of which the holder of the grant, who was at the time in negotiation with the Transvaal Government regarding the extension and amendment of the concession, gave security by deposit of 2,000 shares of the Ermelo Railway. He has, he states, been prevented paying for 1899 and 1900 by the outbreak of war.

After A. 3913.

9. Mr. Henderson alleged, in his letter of the 15th December, 1900, set out at length in the evidence, that in all, including the rent already paid, and his further liabilities on that account, he had spent on the Iron Concession "say, £50,000 cash," but he was throughout not very precise as to particular sums; he has since, however, sent us a letter dated 5th March 1901, in

D. 10.

which he claims to have spent, and to have incurred liabilities, to the amount, in all, of £75,000. In his earlier letter he laid stress on "the heavy cost of sending the best known experts from this country to advise on the soundest

Evidence, 20th Day.

and most economical modes of procedure," the "further heavy expense of perfecting my arrangements," and "a large expenditure of capital for purchasing and obtaining the mineral lands recommended by the experts sent

Evidence, 20th Day.

from England and Scotland as necessary for the erection of the iron works, and for the working of the industry"; and to his later letter he has attached a list of particulars, from which it would appear that less than one-tenth of his expenditure has been on the purchase of "options on farms," and of the rest nearly one-half on buying back the concession he had sold for £16,000, and the balance on rent, interest, and railway promotion.

Evidence, 20th Day.

10. Mr. Henderson estimated the least sum necessary to give practical effect to the Nellmapius Concession at £500,000, and finding it impossible to procure this sum to work an expiring concession, he applied to the Transvaal Government for further powers early in 1898, not, however, in his own

D. 7.
A. 3952.

name, but in that of a Transvaal Boer, Mr. Labuschagne. But the days of exclusive manufacturing concessions, of the kind given to Nellmapius, had long ago been numbered, and the powers of the Executive Government had been limited to the making of agreements under the scheme of 1896, which we have set out and commented upon at the end of this part of our

D. 7.

Report. The Executive Council found itself, therefore, unable to cancel the existing concession, or to renew or extend it, and they referred the matter

A. 3949.

to the decision of the Volksraad; and on the 17th August, 1898, that body passed a resolution, No. 982, "that from the Concessionaire be demanded the full amount due in terms of the concession until July, 1902,

A. 3952.

and further instructs the Executive Council to enter into a contract with applicant (*i.e.*, with Mr. Labuschagne) for the erection of an iron factory strictly in accordance with the model scheme . . . . and submit the same . . . . to the First Volksraad."

D. 8.

11. A contract was drafted, purporting to be based on this resolution, but actually between the State Secretary and the old Concessionaire, Henderson—Labuschagne, the applicant approved by the Raad, not being

D. 9.

mentioned at all. The draft was submitted to the Executive Council, and approved on the 4th March, 1899, "subject to confirmation by the Hon. the First Volksraad," but the war intervening, it was no further proceeded with and remains inchoate.

Objections.

12. The Iron Concession was objected to, on the part of the Johannesburg Chamber of Mines.

Validity of the Concession.

13. We are of opinion that the concession originally given to Nellmapius, which unquestionably had the approval of the Volksraad, was lawfully granted, and that it is valid and will continue in force until July 1902, when it will expire by efflux of time. As it has never been and cannot now be put in operation, no interference by the Government is called for.

Conclusions.

14. Mr. Henderson asks the British Government, in consideration of the expenditure and trouble which he says he has incurred in respect of the expiring concession, though he effected nothing under it, to ratify the uncompleted agreement; in other words, to enter into a contract to propose to the Legislature of the Transvaal Colony, in consideration of his (Mr. Henderson's) discharging his debts under the old Concession and constructing an iron foundry in the Transvaal capable of producing 100 tons of each of certain kinds of iron, to impose a prohibitive import duty on those articles of 25 per cent. *ad valorem*, and to raise the duty from time to time.

15. We are of opinion that the incoming British Government is under no obligation to consider this claim.

THE LEATHER CONCESSION.

History of the Concession.

1. The Government of the late South African Republic by deed dated 16th March, 1885, granted to Mr. G. R. Ockersee the exclusive right to establish manufactories for the tanning and preparation of leather, and the manufacture of articles of that material. The Concession was granted for the term of 15 years to be reckoned from 24 months after the confirmation of the Concession by the Volksraad. It was stipulated that the Concessionaire should pay the Government an annual sum of £100, or in lieu of this, the Government had the right to claim 10 per cent. of the net profits on the business.

D. 1.

Terms of the Concession.

Operations under the Concession.

2. A manufactory was erected at Pretoria under this Concession, and there is no allegation before us that the conditions of the Grant have not been complied with. The Concession has passed through several hands and is now held by the "Transvaal Leather Company." We were informed that an application was recently made to the late Government for an extension of the term of the monopoly, but that the war prevented this from being proceeded with.

D. 2.

Sixth Day's evidence.

Validity of the Concession.

3. This Concession was authorised by a Resolution passed by the Volksraad on the 8th October, 1884. Although the language of the Deed of Concession seems to point to a subsequent ratification by the Volksraad rather than to the precedent authorisation as the date from which, with two years added, the term was to run, there seems to have been no other Volksraad resolution and the date 8th October, 1884, is stated by the Volksraad Commission on Concessions of 1895 as that which is meant. The term of the Concession runs therefore from 8th October, 1886, and expires on the 8th October, 1901.

Conclusions.

4. In view of the fact that this Concession expires on the 8th October next, it does not appear to us that it is necessary to say more upon the subject, except that further enquiry should be made at Pretoria to see that all payments due to the Government have been made up to the date of the termination of the right.

AGREEMENTS UNDER THE INDUSTRIAL SCHEME OF 1896.

1. In addition to the Dynamite, Liquor, Iron, and Leather Concessions with which we have already dealt, several other monopolies for the manufacture of various articles were created during the earlier years of the late South African Republic. Among these were those for the manufacture of sugar, wool, bricks, earthenware and porcelain, cement, oil, soap, matches, ropes, paper, and candles.

History of the Scheme.

D. 1.

2. In the year 1895 an inquiry into all these Concessions was made by a Volksraad Commission. The Report of the Commission showed that even at that date several of these concessions had lapsed by reason of factories not having been built within the time prescribed, or for other reasons. The Commissioners found this to be the case with regard to the Wool, Earthenware and Porcelain, Soap, Matches, Ropes, and Candles Concessions. The Concession for making bricks was then existent, but the term expires on the 8th October, 1901. The exclusive right to make cement had lapsed, but the Cement Company had secured a new contract giving to them a "preferential right to supply cement to the Government if the article is of the same quality as the imported article." No representative of the cement interest appeared before us. The Paper Concession, granted for twelve years, from 11th January, 1892, was pronounced by the Volksraad Commission to be a doubtful case, in consequence of the non-payment of certain monies due by the Concessionaire to the Government.

3. After this report no further manufacturing rights of an exclusive nature appear to have been created, but the Commission recommended to the Volksraad, and the Volksraad ratified, a scheme for encouraging the establishment of industries in the Transvaal known as "The Industrial Scheme of 1896."

The Volksraad resolution establishing the scheme, and the terms of the scheme are as follows:—

Terms of the Scheme.

Article 1871. "The First Volksraad taking cognizance of the scheme of the Commission constituted by First Volksraad Resolution, Article 628, dated 18th July, *re* conditions of the protection right on manufactures now on the order.

"Further taking notice of the necessity that the erection of factories cannot brook of delay, on account of the pressing circumstances in which the South African Republic finds itself on account of rinderpest and otherwise.

"*Resolves:* To confirm the said scheme, unaltered, as proposed by the Commission, and instructs the Honourable the Government to act in accordance therewith."

Scheme: (1.) "For the advancement of internal industry *each person, or persons, are entitled to erect one or more factories,* with the exception of those industries for which concessions or exclusive rights are granted, and which still have force and effect.

"(2.) Each one who desires to erect one or more factories in the South African Republic *will have to give notice of his intention to the Executive Council, who, after having convinced itself that the erection is in the interest of the country, can give its consent upon terms to be agreed upon later on.*

"(3.) The Executive Council will then, *subject to further confirmation of the Honourable the First Volksraad,* be able to grant protection, in the form of the erection of special protection import dues, for a further period to be stipulated by it, upon the to be manufactured article (fabrikaat), *as soon as it appears to its satisfaction that the quantity and quality are satisfactory.*

"(4.) The Executive Council retains the right, if desirable, to appoint persons to carry out the necessary control, and to inspect and check books of the manufacturers, or if the manufacturer is carrying out all the

conditions to which he is subject concerning the quantity and value of the manufactured articles.

"(5.) If it appears that the manufacturer fails to manufacture the required quantity and quality, stipulated at the granting of the protection right, the Executive Council shall, subject to further confirmation of the Honourable the First Volksraad, have the right to annul the protection rights.

"(6.) The manufacturer will not be able to make any misuse of his granted protection right by selling his produce at a higher price than it can be generally delivered without the protection right."

Agreements under the Scheme.

4. Several agreements were made under this Scheme. Our attention was called to some of these by letters, and in a few cases the persons interested brought their claims before us at our public sittings. We heard evidence from persons claiming under agreements for the establishment of a match factory, a soap factory and a cocoa and starch factory.*

5. It will be observed

1. That the Scheme of 1896 does not involve, or even primarily contemplate, the granting of exclusive rights.

2. That the Executive Council could not itself impose import duties, but only agree to submit the question of their imposition to the Volksraad.

D. 2.

6. An example of the common form in agreements under the Scheme is printed in the Volume of Appendices to our Report. Under its provisions the Secretary of State undertook, as soon as he found that the factory was "in good and producing order," "to make a proposal" to the Volksraad "to impose a special protective import duty" of a specified amount upon the articles in question. The products of the factory must be of sufficient quantity and quality in the judgment of the Government. The Volksraad, it was added, "will be able from time to time to increase and decrease this protective import duty."

7. Persons, therefore, who erected factories on the faith of these agreements had, on satisfying the Government as to the quantity and quality of the article which they manufactured, the right to fulfilment by the Government of a promise to submit to the Volksraad the imposition of certain duties. But at any time the Government if not so satisfied might, with the approval of the Volksraad, annul the duties, and their imposition or alteration was at all times entirely within the discretion of the Volksraad.

8. The Scheme, in short, in definite and pointed terms preserved the absolute discretion of the Volksraad to deal as it pleased with the matter of duties on imports, and made no provision for compensation of interests which might be injuriously affected by the non-imposition, alteration, or abolition of such duties. Persons who entered into agreements under the Scheme must, therefore, be taken to have done so with full knowledge of the risk, and as prepared to take their chance of changes in Parliamentary opinion and policy. It is clear, in our opinion, that the new Government has, like the Volksraad, a free hand to deal with duties on imports as may seem best without any obligation to compensate contractors under the Scheme of 1896 who may be affected by such action.

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* Match Factory, *see* Evidence, A. 412—456.
Soap Factory, *see* Evidence, A. 1765—1814.
Cocoa and Starch, *see* Evidence, 20th Day, and D. 3.

PART III.

CONCESSIONS OF RIGHTS OF A MUNICIPAL CHARACTER.

1. PRETORIA AND JOHANNESBURG BONDED WAREHOUSES.
2. PRETORIA MARKET.
3. JOHANNESBURG MARKET.
4. PRETORIA TRAMWAY.
5. JOHANNESBURG CITY AND SUBURBAN TRAMWAY.
6. PRETORIA WATER SUPPLY.
7. JOHANNESBURG-ZUURBEKOM WATER SUPPLY.
8. WONDERFONTEIN WATER SUPPLY.
9. SELATI GOLD FIELDS WATER SUPPLY.
10. PRETORIA ELECTRIC LIGHTING.
11. RAND CENTRAL ELECTRIC SUPPLY.
12. HEIDELBURG AND KRUGERSDORP GAS SUPPLY.

PRETORIA AND JOHANNESBURG BONDED WAREHOUSES.

1. It was the practice of the Government of the late South African Republic to permit, for the convenience of such importers as desired, the entry into its territories of duty-payable goods, free of charge, to be stored at Bonded Warehouses either of a private or of a public character in Pretoria and Johannesburg until they were cleared for consumption. This practice was sanctioned by the Customs Law of 1887, which also authorised the Government to make contracts with private persons for the erection and working of Bonded Warehouses. D. 1.

Pretoria Bonded Warehouse.

History of the Concession.

2. In order to save the expense of the construction at Pretoria of a Government warehouse for bonded goods for the use of importers generally who had no warehouses of their own, the Government in or about 1888 entered into a contract with the Netherlands Bank of South Africa by which that institution was to provide and manage a suitable building for the purpose. In 1898 the Bank ceded this contract to a Mr. Anton Romyn* for £100 or £200—the holder is uncertain which sum—and thereupon the Government entered into a fresh agreement with that person. A. 2, 3, 4, 5. D. 2. A. 7.

Terms of the Concession.

3. The terms of this contract require the contractor to erect at Pretoria Railway Station a suitable building, and at a separate site a store for explosives; and therein to store all uncustomed goods tendered to him. D. 2.

4. The charge for storage is limited by the Agreement to 1½d. per 100 lbs. per day, but the full charge, Mr. Romyn stated, is not levied. D. 2, para. 7 A. 29.

The contract contains rules to provide for the protection of the Customs revenue, but the contractor had the privilege of storing duty paid, as well as unpaid, goods in his store. D. 2.

5. The Government divested itself of the right to give this privilege of keeping a general bonded warehouse to anyone else, but retained power, without compensation to the contractor, to alter the Customs Law, or to levy Customs duties elsewhere than at Pretoria, the effect of which was to place it within the power of the Government to deprive him at any moment of the benefit of the Concession. D. 2, para. 21.

The contract was for 10 years, terminating 1908, and £600 security was required of and given by the contractor, who also had to pay 5 per cent. of his storage receipts to the Government.

Operations under the Concession.

6. The store for explosives has not been provided; probably none was really required. The Bank had built a bonded warehouse so as to comply with the terms of the original concession, and when it retired from the business sold the building to a Mr. Hollands. The new Concessionaire, with, he states, the approval of the Government, instead of building for himself, leased this store, or a portion of it, from its new owner, for £27 10*s.* a month. A. 9 to 12.

The holder of the Concession admitted a profit of £300 to £400 a year, and the Agreement, except that the store was hired instead of, as required by the terms of the contract, actually erected, seems to have been duly carried out. A. 19.

Objection to the Concession.

7. Objection was made to this concession on behalf of the Chamber of Mines.

Validity of the Concession.

8. This Concession appears to have been duly acquired and its conditions, with one exception already pointed out, fulfilled, but the non-fulfilment of that condition was condoned by the Government.

* Mr. Anton Romyn was a prisoner of war on parole at Cape Town; and his books and papers being in Pretoria, was unable to give precise information with regard to all particulars of his business.

CONCLUSIONS.

9. The Concession met a public want, but the express provisions of the contract itself show that the benefits thereof to the Concessionaire might at any moment be lost by the extinction, at the option of the Legislature, of the system upon which they were dependent. The Concessionaire has not incurred that capital expenditure which was in contemplation when the contract was made, and has established therefore no claim to consideration if the Government think fit either now or at any time to terminate the arrangement by alteration of the system.

Johannesburg Bonded Warehouse.

History and terms of the Concession. A. 1366—1371.

10. In Johannesburg a warehouse of the same kind, doubtless approved for the same reason, has existed since 1888, the year succeeding the enactment of the Customs Law, under which these bonded stores are approved.

The conditions of the contract are the same as in the case of Pretoria, and include, as the other did, an objectionable provision by which duty paid and uncustomed goods may be stored together. The privilege of storing duty paid goods does not appear to be largely availed of.

Operations under the Concession. A. 1375.

A. 1377, 8, 9. D. 3. D. 4. A. 1402.

D. 5.

11. The first contract for five years, with a right of renewal for five more, was held by a Mr. C. V. Holboom, who began the business on a scale which he soon found necessary to extend. After the contract had continued for seven years, the business still growing, Mr. Holboom entered into a new contract dated 27th September, 1895, with the Government, and on the 8th October, 1895, with its approval * ceded his concession for £13,000 to a Limited Company, having a Capital of £30,000. This Company had in 1898 erected buildings at a cost of £13,458, and had bought land to the value of £11,112. It earned in storage of bonded goods in 1897 £12,146, and in 1898, an unprosperous year, £6,668, the Government getting £607 and £427 as its share in those years respectively. It claims that since the completion of its new stores it has conducted its business well and has given cause for no complaint, and nothing was urged against this contention on the part of the public of Johannesburg.

D. 6

D. 7.

A. 1395, 7.

A. 1393.

12. In 1898 the Company obtained from the Transvaal Government an extension for 15 years of the period of its contract, on the condition that the percentage of storage rent paid to Public Revenue should be raised from 5 per cent., the proportion stipulated in the earlier agreement, to 10 per cent. The Company accepted the extension offered them on this condition, but preferred to the Government a plea *ad misericordiam* that the 10 per cent. should not be insisted on, and though no decision with regard to that application was ever arrived at, the higher rate has not yet been paid. The contract, with its 15 years extension, would appear to expire in 1921.

Objection to the Concession

13. Objection was made to this concession on behalf of the Johannesburg Chamber of Commerce.

Validity of the Concession.

14. This Concession seems to have been duly acquired and its conditions fulfilled, and it appears from the Company's books that it had purchased land and erected buildings at a cost of £24,570 for the purpose of meeting the requirements of its business.

CONCLUSIONS.

15. It is, however, liable to lose its privileges should the Government see fit, either now or at any time, to terminate the arrangement by alteration of the system, and in that case it would not under the Concession be entitled to make any claim on account of its expenditure. This, indeed, was expressly admitted by Mr. Holboom, the chairman, who stated that the Company thought it improbable that any change would take place in the collection of customs and "so they risked it."

* The written consent of the Government has not been filed, but may be assumed from D. 6.

PRETORIA MARKET.

History of the Concession.

1. A common feature in South African towns is a great Market Square to which the farmers of the neighbourhood resort to sell their produce. Article 1 of Law 8 of 1888 "For the holding of Markets in the South African Republic," prescribes that "the Market shall be kept on the Market Square in each town by a Market Master duly appointed by the Government, except in such towns in which a Town Council exists, in which the appointment shall be made by the Town Council." One of the duties of the Market Master is to act as Auctioneer of goods brought to the market for sale, and he accounts to the owner for the purchase-money, less a commission of 2½ per cent. The terms of all sales are cash-down, and if the money is not paid on the day of sale the purchaser is liable to a charge of 5 per cent. in addition to his purchase-money. The Market Master is paid a salary by the Government (or in the alternative by the town council), and is by law allowed to take 2 per cent. of the 2½ per cent. commission. Any arrangement for the management of a market not exactly in accordance with the law would require, to legalise it, the special authority of the Volksraad.

D. 1.

D. 1, Art. 9.

D. 1.

A. 1222-23.

2. The Pretoria Market place is the property of the Government, so that the Executive Government, which in 1890 permitted no municipal institution in Pretoria, was not only the authority appointing the Market Master of that town, but also claimed, as owner of the soil on which the market was held, the rights of a freeholder over it.

D. 2.

A. 1193.

3. In 1890 the Market Master of Pretoria was Mr. Daniel Jacob Celliers, and with him the State Secretary, as representative of the Government of the South African Republic, entered into the agreement now under reference—the Pretoria Market Concession. By this agreement the Government did two things: it let a portion of the soil of the market place on a building lease having a currency of 99 years to D. J. Celliers to erect shops, a market hall, &c., and it delegated to the same person for the same period the right to manage the market and to collect the 2½ per cent. commission on the sales, on condition of receiving 1 per cent. as a share of the profits. The first of these actions it appears to have taken entirely of its own authority as owner of the soil; the second it took conditionally on the consent of the Volksraad, whose approval, subject to a slight modification in the terms, was granted, apparently with some reluctance, in June, 1890, three months after the execution of the agreement.

D. 3.

Terms of the concession.

4. The principal conditions of the building lease were that it should extend for 99 years; that the site leased should be a specified area of the market square, the Government reserving the right of disposition over the remainder; that the lessee should spend £20,000 on constructing a proper market house and buildings, provided with shops, offices, stalls, and rooms, to be finished before the 15th May 1892; that these should be kept in proper condition and put to proper uses, in the latter case subject to the approval of Government, but that in all other respects the management and control of the market buildings should vest, subject to law, in the Concessionaire; that at the end of 99 years the buildings, &c. should revert to the lessor. A rent was to be paid rising from an annual £150 for the first five years by unequal quinquennial increments to £750 after the expiry of 35 years.

D. 2.

D. 2. Art. 14.

5. But the concession went further than to create a building lease of Government land, and vest in the lessee the management of the property which his capital was to create. The Government thereby undertook to appoint as Market Masters, who would exercise authority over the whole market, outside as well as inside the intended buildings, the nominees of the lessee, and to remove them at his will: and it agreed with the lessee that of the 2½ per cent. levied on sales outside the market buildings (*outside* was by the Volksraad replaced by *inside as well as outside*) "the Government shall receive 1 per cent. whilst the remaining 1½ per cent. shal

D. 2. Art. 13.

be used by the applicant (the concessionaire) to pay thereout the Market Master and his assistants." And this portion of the agreement, which, as it stood, was no doubt *ultra vires* the Government, was confirmed and made valid by the Volksraad, subject to two alterations, of which one was
D. 3. the petty change in the financial conditions above referred to, whereby the Government revenue was to benefit by 1 per cent. on sales within the market building as well as on those outside ; but the second was of real importance, for by it the Assembly, doubtless inspired by a salutary jealousy of the authority entrusted to the lessee, "empowered the Government, if necessary, to establish a second Market Square at Pretoria."

Operations under the Concession.
D. 4.
D. 5
A. 1196–7
D. 6.
D. 4.
D. 4.
D. 7.

6. D. J. Celliers kept the concession for some years, and indeed he continued to be Market Master until 31st March 1896, but his operations would appear to have landed him in pecuniary difficulties, for on the 7th February 1895 he ceded his concession to the Director for South Africa of the Netherlands South African Mortgage Bank, Limited, of Amsterdam, who, after an unsuccessful limited company had first endeavoured to work it, sold it for £30,000 to the present owners, the Pretoria Estate and Market Company, Limited, an arrangement of which the Government approved on the 12th August 1895. The purchase money seems to have been paid in the form of some £80,000 nominal of shares. The new company, whose business was not solely to deal with this concession, but which was engaged in land speculation in Pretoria on a considerable scale, obtained possession of the buildings and the income therefrom on the 1st August 1895, but did not get complete control of the Market till 1st April 1896, when Celliers' connection with it as Market Master ceased. As early as 1895 the company was drawing rents from the buildings at the rate of nearly £200 a month, and on the 31st October 1898 their annual report valued the concession, lease, and interest in buildings at £88,836. There now stand on the leased land a good market hall and a fine row of shops and offices. The 2½ per cent. commission brings in about £3,200 a year.

Objections to the Concessions.

7. Objection was made to this Concession on behalf of the Municipal Authority of Pretoria.

Validity of the Concession.
D. 3.

8. It was contended before us that so much of this contract as effected a lease of Government land was within the authority of the Executive to enter upon, and that it did not require the approval of the Raad. It is not necessary that we should pronounce any opinion on this contention, as the minutes of the Raad show that, with full knowledge of the whole transaction, that body declined to interfere, and thus must be taken to have adopted it. The other portion of the agreement was approved in a modified form.

9. We think, therefore, that the Concession must be accepted as legally valid, and we may remark that although the lease has turned out an excellent bargain for the assignees of the original lessee, it did not appear that, at the time when it was made, when the trade and prosperity of Pretoria were far less than they have since grown to be, it was an improvident bargain for the State to have made.

10. It was not made clear to the Commission that Celliers complied with the conditions of his agreement, that he should erect buildings to the value of £20,000 before the 15th May 1892, but no objection to the lease on that score was raised before us.

D. 4

11. The printed annual accounts, filed by the company, follow a form that does not afford much information, but the Memorandum showing gross income from rents and from the 2½ per cent. commission on market sales, prepared and put in at our request, indicates that the company have taken the benefit of a profit not allowed to them by the terms of Article 13 of the agreement with Government. That article lays down that " the remaining 1½ per cent. (of the 2½ per cent. levied on produce) shall be used by the applicant or his assigns (the concessionaire) in order to pay thereout the Market Master and his assistants," and in so doing reduces the ordinary statutory emoluments of a Market Master, fixed by the Markets Law at 2 per cent. It appears to us that if the terms of this agreement and of the Law are construed together, the Concessionaire Company was bound to

expend the 1½ per cent. on providing Market Masters, and was not authorised to treat any portion of this Sales-Commission as part of its profits, and the reason for so providing is sufficiently obvious, for, in the absence of some safeguard, the convenience of the public might be gravely prejudiced, should the Concessionaire Company, in the interest of its dividends, reduce the number of Market Attendants to too low a level for efficient management, or by paying inadequate stipends tempt them to abuse of their powers.

But in the 13 months ending October 1897 the company appears to have had the benefit of * £475 to £745, and in the year ending October 1898, £554 to £842 out of this 1½ per cent.; that is to say, it made a saving of the difference between the 1½ per cent. and the amounts of the salaries paid to the Market Masters to those several amounts in those years, so making a profit to which it does not appear to have been entitled. D. 4.

12. The company made a further profit, described in its published accounts as *interest*, from the 5 per cent. charge levied on purchasers who made delay in paying for goods. Their practice was to guarantee the solvency of the buyer, taking in case of delay by him in payment his 5 per cent. as their remuneration for making the advance. The legality of this proceeding is perhaps open to question, but the practice was probably convenient to buyers and sellers using the market.

Conclusions.

13. We are of opinion that the terms of the Concession have been in substance complied with; and we have already stated our view that it was lawfully granted. But with regard to the profits which, as we have stated above, appear to have been irregularly made, we recommend that the Government should invite further explanations (the Company in fact not having had an opportunity before the Commission of justifying their action in this respect), and that in the event of these explanations not being satisfactory, should make their recognition of the Concession conditional on the repayment of any sums found to be due.

14. We further consider that that part of the agreement by which the management of the Market is entrusted, subject to no practical check or control, to a private company, is contrary to the public interest. Inasmuch, however, as we also think that the contract does not authorise the Concessionare to make a profit out of that portion of the fees appropriated to the Market Master and his assistants, we foresee little difficulty in arranging for the retrocession to the Government or local authority of the privilege of management.

* The exact sum cannot be calculated from the particulars given. The figures in the text are maxima and minima.

JOHANNESBURG MARKET.

History of the Concession. D. 1.

1. On the 19th October, 1889 (before the date of the Pretoria Market Concession), the State Secretary, representing the South African Republic, entered into an agreement with Messrs. Hans Sauer and Alexander Eckart, Directors of the Johannesburg Market Buildings Co., Ltd., to let on a building lease of 99 years, from the 1st January, 1890, a portion of the Market Square at Johannesburg and to delegate to the lessees the management of the Market on terms which were substantially the same as those of the later Pretoria lease. There were, however, the following differences:—

Terms of the Concession.

2. The rent was £750 a year instead of a varying sum; the buildings were to be erected before 1st January, 1892, and were to cost £50,000; the Company was expressly entrusted with the management and control of *the Market as well outside as inside the Market buildings*, subject however to strict compliance, under penalty in case of breach, with the Law.

The terms of Art. XIII. of the* Contract, by which the 2½ per cent. commission was divided between the Government and the Concessionaire are not precisely the same as those of the Pretoria Contract. The material part of that now under consideration runs as follows:—"Of the 2½ per cent. . . . the Government shall receive 1 per cent., while the . . . . Company shall pay the salaries of the Market Master and his assistants out of the remaining 1½ per cent.," but although less clear than the Pretoria agreement, we are of opinion that, taken in connection with the law by which the remuneration of Market Masters is fixed at 2 per cent., its effect was substantially the same as the corresponding article in the Pretoria case.

D. 2.

3. The lease by the Government to the Company of a part of the soil of the Johannesburg Market Place purported to be made, in the same way as in the instance of Pretoria, by virtue of the Government's position as freeholder. The agreement as a whole, including that portion which divided the commission between the contracting parties, came under consideration of the Volksraad in the same way and at the same time as the Pretoria agreement, and was adopted subject to like changes.

Operations under the Concession. D. 3. D. 4.

4. The Company, which seems to have been formed for the purpose only of dealing with this particular concession, has a capital of £135,000, of which £126,500 is shown as issued, and had raised at one time £25,000 in debentures, but of those it has since paid off £10,000. On June 21st, 1893, it bought for £4,000, from the liquidator of another company, the Johannesburg Weighbridge Syndicate, a concession of some years standing for the erection and working of a wagon weighbridge. This has turned out an unprofitable purchase. On the 31st December, 1893, a date at which its building operations had been long completed, its "Property and Concession Account" stood in its balance sheet at £150,059 as against its share capital and debentures of £151,500. This concession was granted without any payment to the Government, and the buildings are reported to have cost "a sum of more than £40,000" (the exact sum would appear to have been £44,000), but it has not been explained to us what is represented by the extra £100,000 or so of capital.

Objections to the Concession.

5. Exception was taken to this concession by the Chamber of Commerce and by the Municipality of Johannesburg.

Validity of the Concession.

6. We think that this concession must be accepted as legally valid, the same reasons and conditions applying as in the case of the Pretoria Markets Concessions, but subject in this case to the following remarks:—.

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* In both cases we follow the certified translations put in by the Concessionaires.

(1.) In respect of the covenant to build to the sum of £50,000, the Company would appear to be in default, for it represents itself only to have spent "more than £40,000," and on this account it is liable under Art. XVI. of its agreement to a fine of £50, and to be required to make up the deficiency.

(2.) But over and above this the summary of accounts filed by it suggest D. 5. that it has, under a misconstruction of the terms of its contract, diverted into its own coffers a very large sum, to the benefit of which it is not entitled. In the five years ending December 31st, 1897, its account shows D. 5. that it had received by way of $2\frac{1}{2}$ per cent. commission in round figures £73,000, of which there was payable to the Government two-fifths, or £29,200, plus £3,750, being £750 a year rent for five years, or in all, £32,950; but the Company takes credit for a payment to Government on these two accounts of £29,404 only, a deficiency of more than £3,000. During the same period, under its agreement it should have expended on salaries of Market Masters £43,800, but its whole expenditure on salaries has been £17,255, so that on the two accounts it seems up to the end of 1897 to have retained possession of money, to which its concession did not entitle it, of upwards of £30,000. But more than this, its report for the year 1897 shows that from the completion of its buildings in 1892 up to the end of 1896 it unlawfully levied a commission on sales inside its buildings of *5 per cent. instead of $2\frac{1}{2}$ per cent., a source of profit estimated by the Company's own directors at £2,000 a year, so that on the whole it may be accepted that in the first five years of its life the Company has had the advantage of £40,000 more or less, to which its agreement with the Government did not entitle it.

Conclusions.

7. As to the recovery of these sums we recommend the same course to be adopted, *mutatis mutandis*, as in the case of the Pretoria Market Concession.

We further consider, as in the case of Pretoria, that that part of the agreement which entrusts the management of the Market, subject to no practical check or control, to a private company, is contrary to the public interest, but, for the same reasons as applied to the former case, we foresee little difficulty in procuring its surrender.

* If out of the 5 per cent. the Company paid the Government only 1 per cent., this would probably account for the first mentioned deficiency.

PRETORIA TRAMWAY.

History of the Concession. D. 1. D. 2. D. 3. D. 4. A. 1336-7. D. 5.

1. An exclusive Concession for a period of 30 years for the construction and working of a tramway by animal power in Pretoria was granted by the Government of the late South African Republic to a Mr. Pieter Nicolauas Jacobus Smit on the 20th January 1890. On the 27th November 1891 Smit sold his interest in this Concession to a Mr. Carl Hanau, who in his turn transferred it on the 18th December, 1894, to the Johannesburg City and Suburban Tramway Company, Limited, and on the 31st October 1895 that company resold it to the Pretoria Tramway Company, Limited, then recently formed, for a consideration of £7,000. The last-named was a small company with a capital of £65,000, of which £50,000 only was issued and subscribed in 1896, £15,000 remaining in reserve.

Terms of the Concession. D. 1. D. 6.

2. The terms of the Concession comprise regulations of the usual kind as to breaking up the roads, dealing with private rights, fixing of tariffs, &c. Authority was retained by the Government to expropriate after a period of 10 years from January 1890 on terms specified in Article 31 of the Agreement, and five per cent. of the gross receipts were made payable to public revenue, but this rate of contribution was in 1891, by Executive Council's resolution, reduced to one per cent., and the reduction made applicable to all Tramway Companies. The Government had the right to order extensions, and the Company the privilege, after the expiration of its thirty years, to claim that if a further concession for tram lines *on the same footing* (*i.e.*, as we understand, on the footing of the use of animal power) was to be granted it should have the preference. The Concessionaire had to give security in £1,000 for due compliance with the terms of his agreement. Its accounts show that this security was given.

D. 1. Article 16.

It was further stipulated that "for the employment of other traction in lieu of horses and mules the consent of the Government must first be obtained. . . . Should the Government afterwards deem it desirable to use steam or other power the Concessionaire shall have the preference thereto." We shall refer to this article more particularly later on.

The obligation lay on the Concessionaire to submit plans for his proposed tramway for approval within twelve months of the date of his agreement, to begin work within twelve months of their approval, and to open his line within two years of beginning work.

Operations under the Concession. A. 1029-1067.

3. No one of these conditions as to the commencement and completion of the work was complied with, and it was within the discretion of the Government of the late South African Republic to have taken advantage of Art. 28 of the contract and to have cancelled the Concession, but it did not take that step and has suffered the purchasing company to commence, complete, and work 3½ miles of the line.

A. 1050, 1062-3. A. 1051-2. D. 7. A. 1044.

4. The Company laid its rails so that they should be suitable for electric traction, but has been unable to obtain permission to make a change, the Transvaal Government being solicitous to sanction no measure likely to reduce the cost of forage.* It worked for a few years with a small profit, but declared no dividend. During the war its horses were commandeered and its business stopped.

Objection.

5. Objection was lodged against the continuance of this concession on behalf of the municipal authority of Pretoria.

Validity of the Concession.

6. This concession was granted by the authority of the President and State Secretary only, and without the sanction either of the Volksraad or of the Executive Council. We are of opinion, therefore, that it was without legal validity when first given, and there appears to have been no later sanction by any competent authority. On the other hand, the line was

* See also resolution of Volksraad quoted on page 119 (*post*) paragraph 9

constructed and worked absolutely under the eyes of the Volksraad, beneath the windows of whose council-chamber it passes, so that the Company would seem to be entitled to claim the benefit of such recognition as is implied in the tacit permission to continue its operations accorded it by the legislature.

CONCLUSIONS.

7. We have already expressed our opinion that the incoming Government may revise and modify in the public interest the privileges conferred by concessions of this character, even in cases where such privileges have been lawfully granted; and their right to do so is, in this case, made the more incontestable by the infirmity of the Company's title. In any measures which may be taken it will no doubt be noted that this Company was at its origin moderately capitalised, has been economically managed, and is in a good financial position, with funds in reserve. Its charges are, however, in our opinion higher than they should be.

Introduction para. 32.

A. 1029, 1042. D. 7.

A. 1046–7.

JOHANNESBURG CITY AND SUBURBAN TRAMWAY.

History of the Concession. D. 1.

1. A concession to build and work tramways in the town of Johannesburg was granted on 16th April, 1889, to one Sigmund Neumann of that town, by President Kruger and State Secretary William Edward Bok, purporting to represent the South African Republic.

D. 2.

2. On the 19th of September of the same year, Sigmund Neumann, by notarial deed, ceded his concession to the Johannesburg City and Suburban Tramway Company, Ltd., "in consideration of value received or still to receive according to agreement." It is recorded in the deed that the consent of the Government had been given to that Cession "by a letter dated 19th September, 1889, hereto annexed," but the letter has not been in fact produced.

3. For the grant of this Concession, neither the express authority of the Executive Council nor that of the Volksraad was quoted to us; but it was put forward that the approval of regulations for its management at a later date, 9th June, 1891, by the Volksraad was a recognition of the validity of the grant.

A. 2845. D. 5.

Terms of the Concession. D. 1.

4. This Concession gave an exclusive right for a period of 30 years to construct and work by animal power tramways in the town of Johannesburg, including under that name certain specified suburbs and such others as might be approved by the Government. Leave was given to lay rails in the streets, under proper safeguards, and the rights of private owners were strictly reserved.

The Concession included provision for supervision and inspection by the Government of the works, both during construction and when in operation after completion. Tariffs had to be approved by Government, the service was to be continuous, and extensions of the line might be ordered by the Executive.

The Concessionaire had to submit plans for approval within six months of the date of the Concession, begin work within six months of the approval of the plans, and finish in another two years.

He had to give security in £1,000 and to pay the Government 5 per cent. of his gross receipts, but this rate was afterwards, by an order of the Executive Council, reduced to 1 per cent.

After the expiration of ten years, he might be bought out by the Government on certain terms

It was expressly laid down that the means of traction must be by animal power, horses or mules, "or other power in place thereof, provided the consent of the Government shall first be obtained thereto."

Operations under the Concession. Statement of Company in 14th Day's evidence, par. 1. Statement of Company, par. 10.

5. The Johannesburg City and Suburban Tramway Company, Ltd., by which the Concession was purchased, commenced business in or about October, 1889, with a paid-up capital of £50,000. In return for this sum in actual cash, shares were created to the nominal amount of £225,000, and actually issued to the nominal value of £175,000, this issue being, on the part of the Company, curiously described as "only a reasonable speculative consideration for the Tramway rights, plus the £50,000 cash, plus the support to the Company for some years." It is sufficient to say here that the support to the Company had not when the shares were created been given, and that we were unable to ascertain from the General Manager of the Company the price paid to Mr. Neumann for his agreement. The Concession actually stands in the first balance sheet issued, that of 1891, at the startling figure of £125,000.

A. 239,287.

Statement of Company, par. 22.

6. Johannesburg includes many suburbs, the soil of which is the private property of individuals and companies, over which the rights of the Government or Municipal authority, in respect of the streets, are doubtful or ill-defined, and the reservation in the concession of private rights was

probably directed to such cases. For permission to enter these townships, the Company seems to have bargained with the owners, apparently making a favour of coming into them, and exacting as a condition of doing so, that it should be given " stands," that is building sites, either gratis or at a nominal price. Company's report. 1892.

7. The Company opened 4¾ miles of tramway in February 1891, and has since extended its mileage to 11¾ miles. It would appear to have issued 35,000 of its reserve 50,000 shares to pay for extensions, so that its capital issue now stands at £210,000, out of a possible £225,000. It was admitted that £100,000 was approximately the true cost of the tramway and rolling stock, and that £110,000 was promotion money. As a matter of fact, however, no more than £85,000 cash capital has been provided; the difference between that sum and £100,000, the cost of the works, having been met from savings. In his address to the shareholders at their meeting in March 1892, their chairman informed them that 4 per cent. was a very handsome dividend to people who invest their money in tramway shares. The Company has paid the following dividends:— Statement of Company, par. 3. A. 265. A. 279,287. A. 2840. » A. 256, and Annual Reports of the Company.

1893—4 per cent. on its nominal capital, £175,000 = 14 per cent. on its true capital expenditure £50,000.

1894—4 per cent. on its nominal capital, £175,000 = 14 per cent. on its true capital expenditure £50,000.

1895—6 per cent. on its nominal capital, £210,000 = 14·8 per cent. on its true capital expenditure £85,000.

1896—10 per cent. on its nominal capital, £210,000 = 24·7 per cent. on its true capital expenditure £85,000.

1897—7½ per cent. on its nominal capital, £210,000 = 18·5 per cent. on its true capital expenditure £85,000.

1898—nil.

The fares charged by the Company amount to about 3*d.* per mile. A. 253.

8. The Company did not complete its year of business, 1899, but on the outbreak of war moved its horses over the Natal Border to Mooi River, where at a later date they were captured by the Boers. It reckons that an expenditure of £10,000 will be necessary to enable it to resume business. Statement of Company, par. 10.

9. The Company in 1891 and 1895 endeavoured but without success to obtain the permission of the Transvaal Government to substitute electrical for horse power. Statement of Company, par. 8.

In 1898 the propriety of granting permission to tramway companies to make use of mechanical power was debated in the Volksraad, in connection with counter memorials presented to it by the Directors of the Johannesburg and other Tramways asking that it should be allowed, and by a number of opponents of the proposal. And the Volksraad* resolved " not to grant electricity or steam as motive power to Tramways in towns or cities generally, or to Johannesburg specially."

10. On the 18th March, 1898, in consideration of an undertaking given to that end by the Company, the Executive Council resolved " that it will make no use of the right of expropriation as contained in Article 31 of the Concession, provided the Company henceforward carries out the post contract . . . free of charge . . . during the continuance of the Concession." D. 6. A. 262, 3.

11. On behalf of the Municipal authority of Johannesburg, objection was raised to this Concession, on the ground that the Town Council ought to be entrusted with certain rights of control over the trams for the regulation of the traffic and the fares, and that a reasonable expropriation clause ought to be included in the Contract. Objections to the Concession. Evidence, 14th Day.

12. This Concession was granted by the authority of the President and the State Secretary only, and without the sanction either of the Volksraad or Validity of the Concession.

* Resolution 1055 of Volksraad Minutes 1898, page 763.

of the Executive Council. We are of opinion therefore that it was without legal validity when first given, though we think that this defect in the Company's title was at least in some degree cured by the recognition accorded to it by the Volksraad, when that body passed and gave the force of law to regulations for the management of its business.

Conclusions.

13. It follows that the Company's working powers, tariffs, rights to deal with streets, &c., should not be considered as based upon the Contract entered into between it and the Government, but upon the legislative recognition accorded, *ex post facto*, to its existence and its expenditure. We have already expressed the opinion that the incoming Government may revise and modify in the public interest the privileges conferred by Concessions of this character, and their right to do so is in this case made the more incontestable by the infirmity of the Company's title. Due regard will no doubt be shewn to any equitable claims to consideration by the Company based upon its real expenditure and the actual value of its works, but it may be worth while to recall attention to the importance to all tramway companies in South Africa now using animal traction of the substitution of mechanical power; to the fact that the Johannesburg lines are not, though those at Pretoria are adapted for the use of electrical power; and to the circumstance that the Volksraad had definitely vetoed the use of mechanical traction in urban tramways generally and in Johannesburg specially.

Introduction, par. 32.

PRETORIA WATER SUPPLY.

History of the Concession.

1. Before the construction of the works under the provisions of this Concession, Pretoria depended for its water supply entirely upon wells and upon water flowing from the upper reaches of the Aapies River through the open conduits or "furrows" which line the roads, and there was in consequence much illness in the town. The present supply is drawn direct from the source of this river in some remarkable springs which rise at the meeting of a dolomite and slate formation, and appears to be of very good quality and sufficient in quantity, so that water is now considered to be one of the advantages of Pretoria. A. 1148.

D. 1.

2. The Company which holds this Concession founds its title upon a grant made on the 1st of March, 1889, by the Government of the South African Republic to Mr. L. G. Vorstman, which on the 10th December, 1889, was formally ceded to the Pretoria Water Works Company, the present holders.

D. 1.
Terms of the Concession

3. By this deed the Concessionaire bound himself to "conduct to and into the 'erven' of Pretoria water for drinking purposes of good quality in every respect." The water was to conform to a standard to be fixed by the Government in concert with the Concessionaire. The deed contained provisions for securing that the supply of water should be adequate in quantity as well as in quality, and in default the Government reserved to itself power to have the works done at the cost of the Concessionaire, or to declare the Concession lapsed. The Concession fixed a scale of maximum tariffs to be computed by hydrometers, but allowed the Concessionaires and Consumers to agree for the supply of water without the use of meters. It was alleged by the Company that, in fact, a considerable prejudice against the use of the meter system was found to exist in Pretoria, and that they had, therefore, been obliged to proceed entirely, at a loss to themselves, by way of agreement with individual householders.

4. The Concession was granted for a term of fifty years, expiring on the 28th February, 1939. Under its provisions the Government has power once every three years after the expiration of ten years from the commencement of working, upon a year's notice, to expropriate the Concessionaire upon the basis of a number of years' purchase, diminishing with the diminution of the term, of the average net profits of the last five years preceding the expropriation, leaving out of account the two least profitable years. The deed conferred upon the Concessionaire no exclusive right, but a Resolution was subsequently passed by the Executive Council on the 26th November, 1889, purporting to give to the Concessionaires "the exclusive right to the entire conveying of the water for the town." It was alleged that this was done in order to enable a company to be formed with funds sufficient to construct the necessary works, at a time when material could only be conveyed to Pretoria by ox wagon, and the cost of construction was consequently great. A. 1148A.

Operations under the Concession.

5. The Pretoria Water Works Company, Limited, was established by Articles of Association dated the 31st December 1889. The capital of the Company was £101,000, composed of D. 4.

1,000 Founders' Shares.
75,000 Ordinary Shares.
25,000 Debenture Shares.

In the balance sheet of 31st December, 1898, the "Concession Account," presumably the estimated value of the Concession, was entered as being worth £17,504 6*s.* 8*d.*, while £78,778 appeared as having been spent on construction of the water-works system, and £3,807 2*s.* 7*d.* for "Meter installation account." It was stated that for the four years ending in A. 1189.

1896 a dividend of 2½ per cent. was paid on the Share Capital. The debentures carried interest at 8 per cent.

A. 1189. 6. The work of the Company was favourably reported upon by the Second Volksraad Commission in 1895. The Company state that, by the opening of a new and distinct spring undertaken upon their own initiative, the flow was in 24 hours increased by 1,000,000 gallons, and allege that the price charged to the public is less than in any town in South Africa, and that nearly a million gallons of water a year have been supplied free of cost to the Government for public institutions, fountains, fire hydrants, etc., although the Agreement only requires the free supply of 600,000 gallons a year for these purposes. It is stated also that the water supply is of great benefit to the poorest classes who, without any payment, can obtain pure water from the public fountains.

Objection to the Concession. A. 1148. 7. Objection to this Concession was made to us on behalf of the Acting Municipal Authority of Pretoria.

Validity of the Concession. Par. 30, Introduction. 8. The legal position of the Company has for many years been questioned, and upon weighty grounds. We have already, in the introduction to our Report, expressed our reasons for holding that the Executive Government have no power without the sanction of the Volksraad to grant exclusive rights, and the resolution of the Executive Council which purported to grant them to the Company is therefore in our judgment null and void. The legality of the alienation by the Government of the water of the Aapies River to a commercial company was also seriously questioned, as it was asserted that such water had already been acquired by the Government for the town. It certainly appears that the Company had doubts concerning the stability of their position for no water rate properly so called was levied by the Company or sought to be enforced in Pretoria, agreements in every case being made with individual householders as to the price to be paid for the supply afforded. But even more serious difficulties confront the Company. On A. 1148 and D. 2 (*b*). 23rd August, 1898, the First Volksraad, by Resolution Art. 1016, adopted a report made by a Committee appointed to consider the question. This D. 2 (*a*). report found that the resolution of the Executive Council on the 26th November 1889, giving to the Concessionaire an exclusive right, was *ultra vires*, because (*a*) rights to supply water had then already been reserved to a contemplated Municipal Authority, and (*b*) because an exclusive right could only be given by the authority of the Volksraad. The Committee therefore, who also found that, in some particulars, the Company had not fulfilled its obligations, recommended the cancellation of the Executive Council Resolution, dated 26th November 1889, and instructed the Government to grant to the Provisional Town Council of Pretoria the right to establish and exploit a water system for Pretoria or to take such other steps whereby the public of Pretoria should in every way be supplied with as good and as cheap water as possible.

A. 1189 9. The position of the Company after the passage of this Volksraad Resolution was precarious in the extreme. Their exclusive rights were definitely obliterated; their right to take water from the sources whence they derived supply was questioned; and a municipal competition was threatened by instruction of the Raad. Yet the Company, who appear to have been regarded with favour by the Government, extracted from this D. 3. unpromising situation a recommendation from the Executive Council of expropriation on the basis of the shareholders and creditors being paid out at the rate of 20*s.* in the £ and the debenture holders at £110 per £100, the Company further receiving on account of goodwill 72 per cent. of its capital of £75,000, less the amounts paid theretofore in dividends. These terms of expropriation were, however, subject to the approval of the Volksraad, and we are of opinion that the previous attitude of that body towards the Company justifies us in saying that it was extremely unlikely that such approval would have been accorded. The terms in question appear to have been unreasonably high, and it was admitted by Mr. Roos, who A. 1189. represented the Company at the hearing, that they had no claim to any terms of expropriation as matter of legal right.

Conclusions.

10. Under these circumstances we think that, if it be decided to expropriate at all, a fair basis would be that the Company should receive an amount which would indemnify them for the expenditure which can be proved to have been actually made on the undertaking. If expropriation be not carried out, we have already elsewhere indicated what in our view is the basis on which the Company should be granted legal powers enabling it properly and with due regard to the interests of the public to conduct its business.

Introduction par. 32.

JOHANNESBURG AND ZUURBEKOM WATER SUPPLY.

History of the Concession.

A. 1522, et seq.

D. 1.

A. 1495, et seq.

1. The township or parish of Johannesburg, the nucleus of the present city, was a Government farm in the soil of which it was contended before us that the Government held and could exercise the rights of a freeholder. The parishes or townships that have since grown up around that nucleus are the properties of individuals or of companies, purchasers from earlier freeholding proprietors. On the 8th December 1887, while the city was still in its infancy and comprised little more than Johannesburg proper, the Government of the South African Republic, purporting, it would seem, to act within its authority as owner of the soil, granted to a Mr. Sivewright of the Cape Colony (now Sir J. Sivewright) who had acquired a lease of the water source at a farm named Doornfontein and of a portion of the farm itself "the right to lay pipes through the streets of Johannesburg in order to supply the inhabitants with water" on the following, among other less important, conditions:

Terms of the Concession.

D. 1.

2. The contractor was to form "The Johannesburg Waterworks, Estate and Exploration Company, Limited," lay pipes subject to certain conditions usual in such cases, and give without charge a small quantity of water to Government institutions in Johannesburg.

The right to lay pipes was to continue so long as the company remained lessee or owner of the Doornfontein water. If that right were lost, the Government might take over the company's plant.

A limit of price of supply to the public—4*s.* per 100 gallons—was fixed, but no obligation to supply was imposed on the company.

The Government expressly stipulated that no encroachment should be made on private rights, and that the Agreement should confer no monopoly, and it guarded itself from being regarded as guaranteeing water to the public.

Operations under the Concession.

D. 2.

3. A company was formed in accordance with this agreement, with a share capital of £150,000, of which £102,500 was at once spent on the purchase of the Doornfontein water source and of a part of the farm, and it began to provide water within the time limited by the Agreement.

D. 2.

D. 7.

D. 2.

Since 1893 other water-bearing farms and water-rights have been acquired, and a subsidiary company, Zuurbekom, has been absorbed, and the Johannesburg company's capital increased to cover these purposes and the extension of mains, works, &c., to £850,000.

A. 1520, 1, 2. 5.

A. 1530.

The Company has extended its supply over the whole city of Johannesburg, including the "private" townships, in the latter case by agreements with the owners of the soil.

A. 1523, 4, 5, 8.

4. In the case of these private townships it was alleged that their owners conferred upon the Company an exclusive right to supply water within their boundaries. If such a grant was in fact made, and was in law valid, the Company would have practically possessed itself of exclusive powers to

A. 1528.

supply water to the whole of Johannesburg, the reservation in the original contract against a monopoly being ineffectual in face of the exclusive rights acquired within the privately-owned townships, estimated at four-fifths of

A. 1533.

the whole area of the city.

Evidence, 8th Day.

But although Mr. Gilfillan, the counsel for the temporary municipality of Johannesburg, who appeared to oppose the confirmation of this Concession, conceded by implication that the grant to the concessionaires of the exclusive right to supply water in the private townships was valid, we are not satisfied that this was the case, and desire to express no opinion in the matter for the reason that the concessionaires failed to produce the alleged grant, and

4039, 4047-54.

that its validity was strenuously denied by Mr. Goch, the representative of another water company, who asserted at a later enquiry that the title of each standholder in the private townships was entirely free from any such

servitude except on the estate of Doornfontein, which belongs, or did belong, to the Concessionaire Company itself.

5. The price charged is 10*s.* per 1,000 gallons, less 10 per cent. discount. A. 1498.
The water is reported to be now of good quality and the quantity ample, and means of increasing the supply will shortly be available. A. 1504, 5. A. 1500.

6. Very high prices seem to have been paid for the acquisition of the Doornfontein and other water rights, and they stand in the Company's books at £438,472. D. 2. D. 3.

That these figures included high promoters' profits is suggested by the terms of the following section, which we quote *in extenso* from the Company's Statutes, without comment:—

"Powers of Board.—They may do all things necessary for executing and "carrying into effect, with such modifications, variations, or extensions (if "any) as they may think necessary, any agreement for the amalgamation "with the property of this Company, or the sale, purchase, or lease of any "property, movable or immovable, in the South African Republic, the Cape "Colony, the Free State, Natal, or elsewhere, and the power of the Board "shall not in this or in any other respect be affected or restricted by reason "of any of the members thereof being interested as vendors or otherwise in "the subject matter of any such agreement, nor shall any member of the "Board, or promoter of the Company, be under any liability to account or "otherwise for any profits, or moneys, or advantages derived from or "consequent upon the said agreement, or any modification, variation, or "extension thereof."

The Company, however, claims that at a later date it disposed of its Doornfontein land at a profit. It has attained a fair measure of financial success, as it has paid dividends of 5, 6, and 7½ per cent. A. 1948.

7. The Zuurbekom Company, now allied with the Johannesburg Company, was founded in 1897, to purchase and work two rights acquired by a Mr. Blakeney. This gentleman had bought the water rights in a farm called Zuurbekom, and had obtained authority from the Government to lay pipes from that place to Johannesburg. He disposed of these privileges to Messrs. Barnato Bros., who were acting on behalf of the Johannesburg Water Company (and who objected at first to the onerous character of the terms of the Concession for pipe-laying, but this was replaced by a fresh Government agreement); that firm formed the Zuurbekom Water Company, with a capital of £120,000, of which £31,666 in shares, and £15,000 in cash was assigned to the vendor. The Company so formed entered into relations with the Johannesburg Company by which it insured for itself in return for placing its water supply at the latter's disposal terms securing a minimum dividend of 6 per cent. Since that time its shares have all been acquired by the Johannesburg Company, and it has ceased to have an independent existence. The Zuurbekom Company never exercised its right to take water into Johannesburg; its supplies are and always have been pumped into the Johannesburg Company's reservoir and mains.

History of Zuurbekom Concession. Evidence 8th Day. Statement of Company. D. 5. D. 6. Evidence 8th Day. Statement of Company. D. 7. A. 1497. 8th Day's evidence.

8. The Chamber of Commerce and the municipality of Johannesburg appeared by counsel to oppose the continuance of these Concessions and complained of the monopoly and of the high rates charged for water, and it was admitted by the Company's Manager that up till recent times the quality of the water supplied had provoked grave complaint.

A Commission appointed by the Government to examine generally into the subject of the water supply of Johannesburg, and which presented a valuable report in 1895, made reference to the "everlasting complaints" against the Company's supply, both in respect of quality and quantity; and the analyst, to whom samples of the water were at that time submitted, reported that, in comparison with other sources, the samples from the Company's works "must be rejected."

Objections to the Concessions. D. 1. Wonderfontein Report (*post*).

9. From the point of view of public policy, we consider it a further objection that, if the position taken up by the Company as to its alleged exclusive rights is legally well founded, the result as a whole of the Concession and its

developments would have been to place the city of Johannesburg at the mercy of the Company, which can charge ten times the price it now thinks proper to levy, and can at its discretion refuse water to whom it pleases.

Validity of the Concessions.

10. These Concessions were not approved by the Raad, but it was argued before us that the agreements constituting them were within the power of the Executive Government, acting as the Municipal Authority of Johannesburg, to conclude; and further that the Government had the same right to enter into an agreement for the supply of water to the occupants of a township, of which it was the freeholder, as the other freeholding owners of the suburbs certainly had.

CONCLUSIONS.

While we are not prepared to pronounce decidedly on this point, we consider, in view of the objections substantiated above, that the continuance of this Concession in its present shape is contrary to public interests. We have indicated elsewhere the line of policy which we think may judiciously be followed in this and similar circumstances.

Introduction, par. 32.

WONDERFONTEIN WATER SUPPLY.

History of the Concession.

1. The rapid increase after the year 1887 of the town of Johannesburg in size and population brought about as a natural consequence a great demand for water, both for domestic consumption and for use in the mines, and produced a corresponding number of schemes, of which at a later date—1895—some dozen were considered by a Government Commission. One of these was the Wonderfontein Concession, which took shape about the year 1890, two or three years after the Doornfontein project, dealt with under the name of the Johannesburg Water Concession, had been started, and after it had begun supplying water to the town. The scheme appears to have originated with the Sanitary Board of Johannesburg, who were dissatisfied with the existing provision of water, which in 1894 was such as in the words of the Commissioners to provoke "everlasting complaints by the public."

D. 1., and Evidence 20th Da

2. The scheme is described in the Report of the Commission of 1895, as follows:—

"This project was proposed by the Sanitary Board of Johannesburg.

"The farm Wonderfontein is situated in the District of Potchefstroom, D. 1.
"about 46 miles from the high level reservoir for Johannesburg. The
"difference in level between the springs and the reservoir is 1,100 feet.
"The quantity of water rising here can be safely estimated at 10 million
"gallons per diem. The spring is forced to rise by a dike of greenstone
"cutting the underground dolomite limestone at a right angle nearly. At
"a distance of about 200 yards lower down, the water from this spring
"joins that of the Wonderfontein Spruit, which comes from Gemsbok-
"fontein under the same conditions as the first-named spring; the quantity
"of water at this point was estimated by the Town Engineer of Johannes-
"burg to be 26,000,000 gallons* per diem during the whole year.
"From this point the two streamlets flow together for about a mile in
"a westerly direction, afterwards the greater part of the water disappears
"under the earth through a number of caves, cracks, and fissures in the
"rock in a northern direction. For some distance north of the entrance
"of these caves the movement of the water can be followed in the same
"direction. It is therefore not improbable that the water flows off in cross
"galleries or cracks parallel to the above-mentioned greenstone to an
"unknown depth; the remaining water of the joint streamlets runs further
"over the farms Stinkhoutloom and Wolverdiends, upon which last-named
"farm it disappears in the same way as already described.

"The works in connexion with this project will consist of a *prise d'eau*
"at the spring, three pumping stations, two intermediate reservoirs, and
"46 miles of 16-inch pipe, and they are estimated to cost about
"£462,000.

"The yearly expenses are computed to be £74,000 on a daily con-
"sumption of 2,000,000 gallons, £66,500 on a daily consumption of
"1,500,000 gallons, and £59,000 on a daily consumption of 1,000,000 gallons.
The price for the water on the respective consumptions per 1,000 gallons will be, delivered at the reservoir at Johannesburg, 2*s.* 0½*d.*, 2*s.* 5½*d.*, 3*s.* 3*d.*"

3. On the 2nd March, 1891, there was granted to the owners of the farm on which this wonderful spring takes its rise, seven persons of the name of Oberholser with two others, a Concession for the supply of water to Krugersdorp, thence along the main gold reef to Johannesburg, and from D. 2.
there to Boksburg and the surrounding gold fields; that is, practically for the whole length of the Witwatersrand goldfields, a distance of between A. 4065
thirty and forty miles. At that time there was and indeed still is, no artificial supply of water to any part of this great scene of industry, except A. 4067

* At a later date, actual measurement proved the supply to be much greater.

A. 4063.

to the town of Johannesburg itself, and even there, as has been seen, the quantity and quality gave rise to complaint.

Terms of the Concession. D. 2.

4. This Concession was for the period of fifty years, subject to a right reserved to the Government to expropriate "at all times after ten years from the commencement of the exploitation" on certain terms. The concessionaire was to submit his plans within twelve months of the date of the agreement, and to have the works completed and ready for use within twenty-four months of the receipt of the approval of the Government, and he had to give moderate security.

The Concession granted to its owners the right to take one-fourth of the water of the stream, subject to certain safeguards in the interests of lower riparian owners, to lay pipes in the public streets, and to erect buildings, and required them to provide water of a certain standard of excellence. A maximum tariff was laid down, and authority given to cut off the supply of persons who did not pay their dues.

From the profits of the Concession, after providing for working expenses, for reserve, and for payment of a 12 per cent. dividend on the cost of construction, 10 per cent. was to be paid to the Government.

The Concession could not be transferred without the assent of the Government, except to a limited company, and it lapsed in case the concessionaire became insolvent, or in case he failed to submit his plans, or to complete his works in terms of his agreement.

Operations under the Concession. A. 4075.

5. This Concession, together with the connected water rights, was acquired by a Mr. G. H. Goch, the present holder, in consideration of a rental of £2,000, rising eventually to £3,000 a year.

A. 4022–5. „ D. 3. Evidence, 20th Day, A. 4028

He submitted plans in February, 1893, a date which he claims to have been within twelve months of the date of the Concession, 2nd March, 1891; and they were approved by the Government on the 22nd January, 1897. The delay had, it would appear, arisen in consequence of the Sanitary Board of Johannesburg having taken up the question of water supply generally, and the matter having gone before the Commission to whose report reference has already been made.

D. 4.

On the 1st February, 1897, immediately after the approval of the plans, the security required by the terms of the agreement was given.

D. 5.

6. But before this took place, Mr. Goch had been in correspondence with the Transvaal Government with a view to obtaining from them a guarantee of interest. On the 17th April, 1896, representing himself as the owner of the Concession—a position which it is of importance, in view of the terms of the original contract, to note that the State Secretary accepted without comment—he asked the Government

1. To subscribe for £100,000 shares in the Company, and
2. To guarantee 3½ per cent. interest on its capital,

and he offered in return

3. To reduce the tariff rate for water from 40*s.* per 1,000 to 10*s.* per 1,000 gallons supplied;
4. To give the Government 25 per cent., instead of 10 per cent., of the surplus profits;
5. To pay salaries to two Directors nominated on the Company's Board by the State;

and, further, to provide 3,000,000 gallons a day instead of 1,200,000 gallons.

D. 6.

7. On this offer the Executive Council passed a resolution of the 24th August, 1896, resolving "to propose to the Honble. Volksraad to make available a certain amount, say up to £20,000, out of the proceeds of the stand licences (of Johannesburg) belonging to the State for the purpose of covering an eventual shortfall of interest of the Company," and on the 31st August, 1896, the Volksraad accepted that Resolution.

D. 7. A. 4004.

D 8.

8. The upshot was that the original agreement was modified by a contract between the Government and Mr. Goch, dated the 6th October, 1896, whereby in consideration of the fresh conditions, other than the increased supply, of

which no notice was taken, offered by that gentleman, the Government, subject to careful precautions expressly set out in the contract, undertook to an amount not in all exceeding £20,000 a year, to make up any deficiency in the net earnings of the Company by which its revenues might fall short of providing the interest at 4 per cent. on £500,000 of debentures. The contract made at the same time provision in regard to the share capital of the Company, and some other matters.

9. After this settlement had been arrived at the Government intimated its desire in November, 1897, to amend the plans they had already approved. Mr. Goch stipulated that if this were done he should have an extension of time to construct his works, and at the same time asked for some further trifling changes in his Concession. The extension was granted, and permission given that, in amendment of the original contract, the capital of the proposed Company should be paid up only as required and not at once, but it does not appear that Mr. Goch's plans were then, or at any subsequent time, approved. In February, 1899, Mr. Goch asked for, and obtained from the Government, leave to increase the share capital of his Company, originally fixed at £350,000, to £500,000, and he again offered to make the supply 3,000,000 gallons a day, and a supplementary agreement was made embodying these conditions. A Memorandum showing the particulars of the supply, required by this amending Agreement of 1899, has been put in.

Mr. Goch's new plans were completed in September 1899.

A. 4029. D. 9. D. 10. D. 11. D. 12. D. 13. A. 4034.

10. On the 12th July, 1898, the Volksraad granted its approval of a resolution of the Executive Council of earlier date, the effect of which had been to extend the period limited for the construction of the works to the 22nd January, 1900, but the Assembly added the proviso that no further extension should be allowed.

D. 14.

11. While these agreements were in course of consideration and settlement the owner of the Concession had been taking steps to carry out the work. He had had surveys and plans made and gaugings taken of the water supply; he had, as already indicated, submitted plans for the work to the Government, and he had obtained expert opinion with regard to his scheme from competent engineers in England. He had further entered into relations with financial houses in London for the underwriting and flotation of his Company, and in short appears to have used such measures as were reasonable in the circumstances. He stated that his preparations, payments of rent, purchases of wayleaves, etc., had cost him about £20,000, of which £12,000 was expended in rent for the water.

A. 4029–4034. A. 4086. D. 15 A. 4090. *et seq.* D. 16. A. 4083–4–5.

12. Of the twelve schemes for a Johannesburg water supply reported upon by the Government Commission in 1895, by far the highest place was assigned by the experts to this project, and it has not been made clear why the Sanitary Board did not pursue the matter and construct its own works. It was suggested before us at our sittings in Pretoria as well as in London, that powerful influences, extending to bribery, violence, and the breaking up by force of public meetings, were brought to bear on the Sanitary Board in the interests of the older water company to compel it to give up the Wonderfontein scheme. However this may be, the Board did not pursue the project, and Mr. Goch dealt thereafter not with that authority, but with the Executive Government.

D. 1. A. 1516–9. Evidence, 20th Day. Evidence, 20th Day. A. 4028-9.

13. The position of affairs before the outbreak of the war was, therefore, substantially this :—

That Mr. Goch had acquired a water supply of practically unlimited extent. A. 4086.

That he had the permission of the Government and Volksraad, to pump it up to Krugersdorp, and thence to lead it in pipes along the main gold reef, and through the town of Johannesburg to Boksburg at the other end of the mining area, supplying the inhabitants, mines, etc., by the way.

That he was under obligation to provide 3,000,000 gallons a day on specified terms of payment, and was under the necessity to complete his works and provide the water by January 1900.

To enable him to do this he was to float a Company with a share capital of £500,000 and debentures of £500,000, in respect of the latter of which the Government, if the resources of the Company were insufficient to pay interest at 4 per cent., undertook to make up the deficiency.

He had made arrangements to float this Company in London, and had, he avers, expended some £20,000 on his Concession, plans, reports, surveys, etc., but the delay in the approval of his plans, lasting until the outbreak of the war, has prevented the floating of the Company or the commencement of the works.

Objections to the Concession.

14. No objections were put forward to this Concession.

Validity of the Concession.

15. We are of opinion that this Concession was lawfully obtained, and that its conditions have been fulfilled, except in so far as has been prevented by the war, and the delay of the Transvaal Government in returning the plans.

The contemplated water supply appears to be of an excellent character, and it would, under proper control, be an important public benefit.

Conclusions.

A. 4071

Introduction, par. 32

16. The Concessionaire intimated to us his willingness to enter into negotiations with the British authorities for the regulation of his enterprise, on some such basis as that which we have already recommended, and we advise that his Concession be recognised subject to that condition.

SELATI GOLDFIELDS WATER SUPPLY.

History of Concession.

1. No appearance in this case was made before us at our public sittings in South Africa, but we were supplied with a copy of a Contract, published in the *Staats Courant* on the 8th May, 1895, on behalf of Mr. James Macqueen, who was, we were informed, engaged with His Majesty's forces in South Africa, and therefore unable to attend in person.

Terms of the Concession. D. 1.

2. This contract, dated 12th April, 1895, was made between Dr. Leyds, acting as State Secretary on behalf of the South African Republic, and James Macqueen, acting as agent of Coenrad Johannes Abraham Birkenstock of Vryheid, under a power of attorney. The Government granted to Mr. Birkenstock the right to take water from the Letsitele, Thabine, and Great Lataba rivers in Zoutspanberg, at any suitable places above where the Letsitele and Thabine flow into the Great Lataba, such water as might be necessary, but not exceeding the half. The Concessionaire was authorised to erect pump-stations, reservoirs, and other works, and to lay down pipes in order to convey the water to the Selati Goldfields, and the neighbouring gold regions along the line of the Murchison Range, for the use of the goldfields and inhabitants of towns and villages, for household, industrial, mining, and other purposes, but it was provided that the contract should not give any exclusive right. The concession was for a term of fifty years from its date, with a right to the Government to take over the works after ten years on certain terms. The Government reserved to itself an interest of 25 per cent. in the net profits, after deductions for reserve, and interest on the capital expended by the company, to which it was contemplated that the Concessionaire would cede his contract. There were the usual stipulations for the supply of public institutions, and maximum tariffs for the rates to be charged to inhabitants. Plans of the system designed were to be lodged with the Government within twelve months from the date of the contract, and provisions were inserted to secure progress with the works immediately after the approval of the plans.

Operations under the Concession.

3. We are informed that plans were duly deposited with the Government, but that owing to the stoppage of the Selati Railway nothing further was done, and, indeed, neither goldfields in actual working, nor towns, nor villages, and but few inhabitants, exist in the region in question.

Validity of the Concession.

4. It does not appear that the sanction of the Volksraad to this Concession was either asked for or given. We are of opinion, for reasons already recorded, that without such sanction it is of doubtful validity.

Conclusions.

5. The expenditure incurred by the Concessionaire cannot have been considerable, and for years no steps have been taken to carry the grant into operation. We think, therefore, that His Majesty's Government have a free hand in the matter, and are at liberty to ratify or not to ratify, or to modify or amend, the terms of the Concession as they may think proper.

PRETORIA ELECTRIC LIGHTING.

History of the Concession.
A. 1093, 6, 7.
D. 1.
A. 1094.

1. On December 1st, 1888, before any Municipal Authority for Pretoria had come into existence, the Government of the South African Republic created an exclusive concession for lighting Pretoria with gas.

D. 1.

2. A little more than a year later, on March 1st, 1889, they granted a concession, also exclusive, in favour of a Mr. J. Van Zwieten, for lighting Pretoria by electricity, and on April 1st following, varied their agreement with the Concessionaire, and added thereto a contract for the public lighting of Pretoria.

A. 1095, 1108, 9.

3. No steps appear to have been taken to give effect to the gas concession, but a Company was formed, called the Pretoria Lighting Company, Limited, which obtained possession of both grants and began to work the electrical concession. This Company was unfortunate in the stock and plant purchased by it, and fell into financial difficulties. It became necessary to raise further capital for the purchase of new plant and material, and with that object it was reconstructed.

A. 1122.

A. 1129.

D. 1.

But before this was done it entered into a fresh agreement with the Government of the Transvaal, dated September 19th, 1894, by which it surrendered its exclusive concessions for the supply of gas and electricity, and in exchange received the privileges and undertook the duties hereinafter set out.

Terms of the Concession.
D. 1.

4. The new concession may be divided into two parts, of which the first granted to the Company the authority to set up its poles and wires at its own expense for the purpose of supplying light to private houses and for providing electric power, and that done, required it to maintain them, in certain events to extend them, and to supply light to private persons.

5. The second part of the contract was in substance an agreement between the Government and the Company under which the latter was to light for a period of fifteen years certain public offices and streets of Pretoria by electricity, for a payment of £6,000 a year, with a provision for reduction of rates in case of an increase of supply being required; or in case a more economical way of producing electric light were invented.

6. Very strict provisions were included in the contract between the Concessionaires and the Government in regard to the supervision and control of the Company's business, and as to charges to private persons. The Company was bound to supply all applicants for light who met certain reasonable conditions, but no monopoly of supply was given to the Company. In case of interruption, either of the private or of the public supply of light, heavy fines were payable, and were, it is alleged, rigorously exacted.

7. The Government was to receive 25 per cent. of all profits after payment of 8 per cent. to the shareholders, and reserved the right to buy out the Company, on specified terms, after 10 years; but, if it did not take advantage of this power, it was agreed in that case that at the expiry of the contract in 1939 the whole working stock of the Company should become the property of the Government. It was added that insolvency of the Company should render the grant void, but permission was given to liquidate and reconstruct before 1st January, 1895. The Company gave security to carry out its contract by deposit of £1,000.

Operations under the Concession.
A. 1129.

8. With the permission above referred to conferred upon them by their contract, the Company proceeded to reconstruct. The shareholders submitted to very serious sacrifices, giving up one-half the value of their shares, and succeeded in finding the funds to continue their business. Since then they have written off by way of depreciation £16,000, and on December 31st, 1898, produced a balance sheet in which their assets and

D. 2.

liabilities exactly balance. The business has so far made no return to the shareholders, but the Company has recently attained a position of efficiency and good management, and may be regarded as an institution meeting an important public want and likely to succeed.

9. Objection was made to the continuance of this concession on behalf of the Pretoria Municipality. Objection.

10. It was represented to us, on behalf of the Company, that in entering into this contract the Government purported to act as the municipal authority of Pretoria, and in exercise of the powers which a municipality of Pretoria, had such been constituted, would have been able to put in force. No formal approval was given by the Raad, but it was shown that when the grant was considered by the second Volksraad no objection was taken to its validity on that score, and it was urged that this proved that such an exercise of power was not *ultra vires* the Government. Validity of Concession. D. 3.

Conclusions.

11. For reasons that we have stated in the introduction to this Report, we are of opinion that the title to this concession is infirm, and that the privileges of the Company require confirmation and should be dealt with on lines the general nature of which we have indicated. Introduction, par. 32.

RAND CENTRAL ELECTRIC SUPPLY.

History of the Concession. D. 1.

1. This Concession rests on an Agreement, dated 19th July, 1894 between the State Secretary, representing the Government of the South African Republic, and the firm of Siemens and Halske, Electrical Engineers which confers upon the grantees the "right to lay, and have electric conductors for the transmission of power to the mines along the Witwatersrand."

Terms of the Concession.

2. The Concessionaires were authorised, in so far as such right was not in conflict with rights already granted, to erect poles and to fix electrical conductors to the same on Government grounds, public roads, and proclaimed goldfields in the districts of Pretoria and Heidelberg, according to the direction indicated upon a plan thereto annexed.* For these purposes the Government granted to the Concessionaires access to the grounds, roads, and goldfields in question. The grant was expressly stated to confer no exclusive right. Powers of supervision and control, to obviate any injurious influences on telegraph and telephone wires, and for the protection of life and property, were reserved to the Government, with the right of making, altering and amending directions and regulations for this purpose as might be deemed necessary in the public interest.

The Concessionaires agreed to pay to the Government 2½ per cent. on the net profits, the minimum amount to be £500, the payments to commence on the 1st January, 1895, and to take place always on the expiry of each book-year. The Government reserved the right, after 15 years, calculated from the date of the Agreement, to buy out the entire enterprise on certain terms, subject to the giving of a year's notice.

The Concessionaires agreed that, upon the formation of one or more Companies to work the Concession, at least 90 per cent. of the capital should consist of fully paid up shares. Certain sums were deposited with the Government as a security for carrying out the conditions.

Operations under the Concession.

3. It will be observed that the Concession only gave a right to supply electric power to the Witwatersrand Mines, but Dr. Leyds, the State Secretary, by a letter dated the 9th November, 1896, conveyed the assent of the Government to a proposal that the Company then holding the Concession should be allowed "to supply electricity to other persons or corporations so far as this permission might not be in conflict with the rights of third parties." By a deed made in Berlin on the 21st December, 1895, the Concessionaires ceded their rights to a London Company called the Rand Central Electric Works, Limited, having a Local Board at Johannesburg, for £19,000 in fully paid up shares, and £1,000 in cash, a person called Edward Lippert receiving £5,000 in shares, and another called John Hubert Davies receiving £1,000. It was stated in evidence that these persons had some interest in the original Concession.

D. 2

A. 1762.

D. 3.

4. The subscribed Capital of the company is £300,000, and at the end of 1898, £216,234 had been spent in construction expenses.

Dividends of 6 per cent., 8 per cent., and 10 per cent., for the first three years of the Company's existence were guaranteed by Messrs. Siemens and Halske. The revenue derived from the supply of electric power for the year 1898 was £42,723. The minimum payment of £500 was made annually to the Government. It appears that the works, in fact, supply the Netherlands Railway and the town of Johannesburg, and that the Company feeds with power, by agreement, the electric apparatus belonging to the Railway and the Town Authorities, who do the distribution. †

A. 1754.

A. 1763.

D. 5.

Objections to the Concession.

5. The Chamber of Mines stated that they did not object to this Concession, nor was any other objection made to us by other persons.

A. 1764.

Validity of the Concession.

6. No Volksraad Resolution authorised or ratified the Concession, but

A. 1763.

* The Witwatersrand goldfield is all included in these districts.

† We were informed that the Municipal Authority of Johannesburg had acquired the electric lighting concession.

the Company claim that it was made under the general power contained in the Art. 28d of the Gold Law (Law 18 of 1892). This sub-section is as follows :—

> "The Government may by special agreement grant permission for the transmission of electrical currents for the use of the Mines and Mining Works."

This authority clearly does not cover the sanction given by the Government in the State Secretary's letter of 9th November, 1896, to the supply of persons or corporations other than mines.

Conclusions.

7. We are of opinion that the scope of the Concession is strictly limited by the terms of the Gold Law, which confine the powers of the Concessionaire to "the transmission of electrical currents for the use of the Mines and Mining works," and that the letter of the State Secretary, purporting to extend those powers in such a way as to allow the holders "to supply electricity to other persons and corporations, &c.," was *ultra vires* and of no legal validity.

It follows, therefore, that, except for the use of mines and mining works, the Company have no further powers to supply electric current than those (if any) possessed by private persons not holding concessions.

HEIDELBURG AND KRUGERSDORP GAS.

History of the Concession.

1. The claim in this case is based upon a contract dated 19th July 1898 made between the State Secretary, Mr. Reitz, "representing the Honourable Government of the South African Republic," by virtue of a resolution of the Executive Council, Art. 649, dated 13th July 1898, and Mr. Michael Whitty, an American citizen, then living at Johannesburg.

Terms of the Concession.
D. 1.

2. The Government granted to Mr. Whitty the right to lay and maintain gas pipes for lighting, power, fuel and kindred purposes, in order to supply gas to the mines and the public on such portions of the Government grounds, public ways and proclaimed goldfields in the districts of Heidelburg and Krugersdorp as were indicated in a plan annexed to the Contract. Any grounds falling under the jurisdiction of the Town Council of Johannesburg or any other Town Board were expressly excluded. A main-pipe line was to be laid from Boksburg to Krugersdorp with branch lines to the mines and other consumers en route. No permanent exclusive right was granted by the Concession, but the Government undertook to grant no similar right to any other person for two years from 13th July 1898. All plans were to be submitted to the Government and the right of inspection was reserved to the Government. The Concessionaire agreed to pay to the Government the sum of £100 at the end of each year to begin from the 1st January 1899, together with 1 per cent. of the net proceeds of the business, and the Government retained the right to increase the 1 per cent. to 2½ per cent. in case it should consider that course to be "reasonable or desirable." It was further stipulated that the Concessionaire should supply gas for Government purposes free of charge up to 1 million cubic feet a year. As a guarantee for the fulfilment of the contract the Concessionaire undertook to pay to the Government (*a*) £500 before the 1st January 1899, and (*b*) £1,000 one month before gas was supplied to the public, half of this security money to be returned to him as soon as he was able to supply one million cubic feet of gas per day for a period of three months. If he failed to comply with the provisions of the Contract, the Government reserved the right to cancel it, and, in the event of a Company being established, the Government was to be entitled to appoint one director. Power was given to the Government to purchase the entire undertaking, upon a year's notice, after twenty years from 19th July 1898, at a price to be fixed by arbitration on a basis of capitalising at a rate of 7 per cent. per annum of the net profits made on an average during the last five years, excluding the most unfavourable year in this period.

Operations under the Concession.
A. 4155.

3. Mr. Whitty paid the £500 security money and the first annual sum of £100 to the Government of the late Republic, and sent in his plans, after which he returned to his own country in order to raise the necessary capital. In consequence of the political disquiet and the outbreak of war he was unable to form a company. No commencement of the works has therefore as yet been made.

Objections to the Concession.

4. No objection was put forward against this Concession.

Conclusions

Validity of the Concession.
A. 4170.

5. This Concession, involving as it does the grant of wayleaves over Government grounds, public roads, and proclaimed gold fields for a distance of 30 miles, and an exclusion of all others from a like enterprise for two years, was, in our opinion, invalid unless sanctioned by the Volksraad. No such sanction was in fact asked for or given, and nothing effective having at present been done to start the undertaking, we think His Majesty's Government have a free hand in the matter, and are at liberty to ratify or not to ratify, or to modify or amend, the terms of the Concession as they may think proper.

Mr. Whitty informed us that in case His Majesty's Government should think fit to give the necessary ratification to his contract he would be glad to discuss any conditions which might appear to be necessary in the interests of the public.

CONCLUSION TO THE REPORT.

We have now given the results of an investigation which proved to be very intricate and laborious, and we hope that our Report will be of service to His Majesty's Government and to those who will be in future responsible for the administration of the Transvaal. It only remains for us to express our obligations to the Civil and Military Authorities who did everything they could to facilitate our proceedings in South Africa. We also desire to acknowledge cordially the debt that we owe to the great ability and industry of our Secretary, Mr. Bernard Holland.

We have the honour to be, Sir,

Your obedient servants,

(Signed) ALFRED LYTTELTON, *Chairman.*
A. M. ASHMORE,
R. KELSEY LOVEDAY.

April 19th, 1901.

BERNARD HOLLAND,
Secretary.

APPENDICES.

APPENDIX I.

SCHEDULE OF ASSETS.

Referred to in paragraph 34 of the Introduction to the Report.

Number.	Title of Concession.	References to Report.	Nature of Asset or Claim of State disclosed.	Authority for the State Claim.	Expropriation Article.	Remarks.
1	Netherlands Railway.	Part I. 1.	After payment of guaranteed interest, and dividends, and provision for reserve, 85% of surplus earnings to the State. 5,713 shares owned by the Transvaal Government before the war.	Concession D. 1, Articles 33 & 34. Report of Railway Commissioner for year 1897, and later report of Director of Military Railways.	27	The number of shares by report of Director of Military Railways was 5788.
2	Selati Railway -	Part I. 2.	After payment of guaranteed interest and minimum dividend, and provision for reserve, 50% of surplus earnings to the State.	Concession D. 3, Articles 37 & 38.	32	This railway has not been completed or worked.
3	Ermelo Railway -	Part I. 3.	If dividend payable to shareholders (after specified deductions, aggregating 30% of nett earnings, for reserve, and amortization of debentures) exceeds 5%, then 50% of surplus to Government. 50,000*l.* share capital of Company belongs to State. 50,000*l.* has been advanced to the Company by the State by way of loan.	Concession D. 4, Articles 74 & 75. Report, para. 8.	34	This line is unfinished.
4	Pretoria - Pietersburg Railway.	Part I. 4.	After payment of guaranteed interest on nominal capital of Company in shares and debentures, 50% of surplus to State. Refund of deficient interest made good to the Company by the State, with 3½% interest thereon. 300,000*l.* share capital of Company subscribed for and held by the State.	Concession D. 1, Articles 45 & 46. Article 45. Sub-agreement of 10 April, 1896.	42	—
5	Johannesburg-Roksburg Tramway.	Part I. 5.	5% of the nett profits of the tramways.	Concession D. 1, Article 25.	30	This line has not been built.
6	Albertskroon Tramway.	Part I. 6.	Nil - - - - - - -	Nil - - -	28	This line has not been built.
7	Dynamite Monopoly	Part II. 1.	Government share of profit to 31st December, 1898, 211,530*l.*, outstanding.	Volksraad resolutions, 1894, and contract of ditto. Accountant's report. D. 1 (b).	Nil	So reported by the Accountants, but disputed by the Company. *See* Report, para. 50.
8	National Bank -	Part II. 2.	Shares held by the Government, 127,500*l.* Unsettled profit on Mint, amount doubtful.	Report, paras. 2 & 3.	,,	There is a liability on account of the Mint from Government to Bank.
9	Liquor - - -	Part II. 3.	Annual rent for licence to distil, 1,000*l.*	Concession D. 1.	,,	—
10	Iron - - -	Part II. 4.	Rent due 5,700*l.*, being balance unpaid of 21,500*l.*	Concession D. 1, Article 7. Report, para. 8.	,,	Security has been given in 2,000*l.* Ermelo Railway shares.
11	Leather - - -	Part II. 5.	Annual rent, 100*l.* - - -	Concession D. 1, Article 6.	,,	Expires immediately. Uncertain whether rent paid to date.

SCHEDULE OF ASSETS—*continued.*

Number.	Title of Concession.	Reference to Report.	Nature of Asset or Claim of State disclosed.	Authority for the State Claim.	Expropriation Article.	Remarks.
12	Pretoria Bonded Warehouses.	Part III. 1.	5% of all warehouse rents on uncustomed goods.	Concession D. 2, Article 24.	Nil	—
13	Johannesburg Bonded Warehouses.	Part III. 1.	10% of all warehouse rents on uncustomed goods.	Resolution of Executive Council, 17 October, 1898, D. 6.	,,	Payable from 1 September, 1898, but only 5% has been paid.
14	Pretoria Market	Part III. 2.	Rent increasing to 750*l.* per annum. 1% out of 2½% levied on sales as Market Master's fees.	Concession D. 2, Article 4.	,,	The Concessionaire has made certain over-recoveries, for which he should account.
15	Johannesburg Market.	Part III. 3.	Annual rent of 750*l.* 1% out of 2½% levied on sales as Market Master's fees.	Concession D. 1, Articles 1 & 13.	,,	The Concessionaire has made certain over-recoveries, for which he should account.
16	Pretoria Tramway	Part III. 4.	1% on gross receipts of the tram lines of the Concessionaire Company.	Concession D. 1, Article 26, and Executive Council resolution, D.6.	31	—
17	Johannesburg City and Suburban Tramway.	Part III. 5.	1% on gross receipts of the tram lines of the Concessionaire Company.	Concession D. 1, Article 26, and Executive Council resolution, D.6.	31	—
18	Pretoria Water Supply.	Part III. 6.	25% of profits, after deduction for reserve and for interest on capital. A certain quantity of water delivered free for public purposes.	Concession D. 1, Article 19.	4	This Concession ceased to exist before our inquiry.
19	Johannesburg and Zuurbekom Water Supply.	Part III. 7.	A certain quantity of water delivered free for public purposes.	Concession D. 1.	Nil	—
20	Wonderfontein Water Supply.	Part III. 8.	After deductions for reserve and for a minimum dividend of 12% on capital, 25% of surplus to State. A certain quantity of water delivered free for public purposes.	Concession D. 2, Article 19, and amending contract, D.8., Article 1.	5	This Concession has not been put into operation.
21	Selati Gold Fields Water Supply.	Part III. 9.	After providing for reserve and 8% interest on capital, 25% of surplus profits to Government.	Concession D. 1, Article 19.	5	This Concession has not been put into operation.
22	Pretoria Electric Lighting.	Part III. 10.	25% of the surplus profits, after payment of 8% dividend to shareholders.	Concession D. 1, Article 13.	14	—
23	Rand Central Electric Supply.	Part III. 11.	2½% of nett profits of the concession, with a minimum of 500*l.* per annum.	Concession D. 1, Article 6.	7	—
24	Heidelburg and Krugersdorp Gas.	Part III. 12.	Rent of 100*l.* a year, plus 1% of nett proceeds of concession, to be increased to 2½% at discretion of the Government. 1,000,000 cubic feet of gas for Government use free.	Concession D. 1, Article 8.	15	This Concession is not in operation.

NOTE.—Besides the above, evidence was led as to a loan of 80,000*l.*, authorised by the Transvaal Government to be made to a Cold Storage Company. This loan is not referred to in our Report, not having been made under a Concession.

APPENDIX II.

SELECTED EXTRACTS

FROM THE OFFICIAL RECORDS OF THE VOLKSRAAD OF RESOLUTIONS, STATE LAWS, &C., UNDER FOLLOWING HEADS :—

1. CONSTITUTIONAL.
2. ADMINISTRATIVE.
3. MUNICIPAL.
4. WAYS OF COMMUNICATION
5. INDUSTRIAL.

Referred to in paragraph 31 of the Introduction to the Report.

PART I:

CONSTITUTIONAL.

— (1.) —

EXTRACT FROM LAW CONSTITUTING THE TWO VOLKSRAADS.

The law constituting a First and Second Volksraad gave to the Second Volksraad power to legislate in the following matters:—

"The Second Volksraad shall have the power, when necessary, to further regulate the following matters by means of laws or resolutions:—

1. The mining service.
*2. The making and maintaining of wagon and post roads.
3. The postal service.
4. The telegraph and telephone service.
5. The protection of invention, patents, and trade marks.
6. The protection of authors' rights.
7. The development and maintenance of forests and salt-pans.
8. The prevention of contagious diseases.
9. The condition, the rights, and the responsibilities of companies.
10. Insolvency.
11. Civil procedure.
12. Criminal procedure.
13. Such other matters as the First Volksraad may by resolution determine, or the First Volksraad may specially refer to the Second Raad."

First Volksraad pass a resolution confirming the Executive resolutions passed by virtue of the special power of attorney granted to Government by the Raad to legislate upon matters which would not bear delay during the adjournment of the Raad.

Minutes of First Volksraad, 1891. Page 48. Arts. 83-96.

— (2.) —

RESOLUTION of the Volksraad dated 19th July 1883.

The Volksraad taking into consideration the concession on the order do, after having duly considered same, refer it to Government with instructions to amend it in accordance with the spirit (views) of the Volksraad, and resolves further that in future no concession, including the one now on the order, shall be brought before the Raad before and after such concessions have been published at the expense and account of the applicant in the "Staats Courant" for a period of three months, so as to give the public an opportunity of expressing its opinion thereon.

Art. 849.

— (3.) —

EXTRACT FROM THE MINUTES OF THE VOLKSRAAD.

Government Office, Pretoria,
13th July 1888.

To the Honourable the Chairman of the Honourable the First Volksraad.

Minutes of Volksraad, 1888. Art. 1087.

Honourable Sir,

I have the honour for your information and treatment of the Honourable the Volksraad to submit the following copy of the Executive Council's resolution, Art 377, dated 10th July 1888.

On the order discussion regarding the advisability that, specially and in view of the present circumstances of the Republic, the Government be authorised by the Honourable the Volksraad to complete matters in which no provision has been made and which cannot be delayed until the ensuing sitting of the Honourable the Volksraad without causing great trouble.

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* In the amended Grondwet, which was confirmed by the Raad in August, 1899, but awaited publication to have the force of Law, Art. 2, was amended, and reads as follows:—

"2. (*a*) The making and maintaining of public roads and bridges, for which the First Volksraad shall place a sum yearly at the disposal of the Second Volksraad.

"(*b*) The use of public roads and bridges."

The Volksraad resolve to empower and instruct the Government to make provision and to regulate in respect of all matters wherein no provision is made by the Honourable the Volksraad, and which are of such a pressing nature that they cannot bear delay until the following session of the Volksraad, and that such regulations shall have the force of law until the subsequent decision thereon of the Volksraad.

The Government shall report thereon in the ensuing session.

I have the honour to be, &c.,

(Signed) W. EDWARD BOK, *State Secretary*,

Art. 1088. With the votes of Messrs. Mare de Villiers and Taljaard against the Raad, agreed with the provisions of the Executive resolution, Art. 377, dated 10th July 1888, and thus accepts the draft Volksraad resolution therein contained as the resolution of the Raad.

— (4.) —

EXTRACT from Minutes of First Volksraad of 14th June 1893.

Art. 324.

On the Order came a memorial of J. H. G. Davel, P. S. G. Pretorius, and 65 others, dated Vryheid 1893, asking that a thorough investigation might be made by the honourable the Second Volksraad regarding all granted concessions; at the same time memorialists express their regret that no proper list of published concessions has been published for public information.

The report of the Memorial Commission reads as follows:—

"Your Commission agree with memorialists, and recommend that the Government be instructed to lay a list of the granted concessions before the Honourable the Second Raad, and that memorialists be informed of this instruction."

After certain remarks the discussion was, upon the suggestion of Mr. de Clercq, closed.

Mr. Loveday, seconded by Mr. Lombard, proposed the confirmation of the Commission report.

Mr. Wolmarans, supported by Mr. de Beer, proposed that, whereas memorialists asked for an inquiry by the Second Raad, to refer the memorial to the Second Raad, with instructions to institute the inquiry.

The last resolution was negatived by 13 to 11 votes, while the first was carried by 17 to seven votes.

Mr. Malan desired to have it noted that he voted with the minority.

Also Mr. de Beer, because he considered that the memorial belonged to the Second Raad.

Lastly, Mr. Wolmarans, on the ground that through the confirmation of the Commission report power is not given to the Second Raad to institute a proper inquiry as requested.

Minutes of Second Volksraad of 1893, page 326. Art. 667.

Upon the 28th July, 1893, the Government, per letter, intimated to the Second Raad that in conformity with the First Raad resolution—324—it handed in a list of granted concessions.

The Second Raad, after discussion, passed the following resolution:—

"The Second Volksraad, taking into consideration the Government's letter, and in connection therewith the list of granted concessions now on the order,

"Resolves to refer the same back to the Honourable Government, with instructions to make of it a proper list in the following order—

(*a*) all granted concessions, and date of grant;

(*b*) for what special purpose each concession was granted;

(*c*) for what period, with date of expiration, with exception of those concessions which have been considered this year;

and then to lay the list so arranged before this honourable assembly in the ensuing session for its consideration."

Acting under the above resolutions, the Second Volksraad appointed a special commission to enquire into all concessions who reported to that assembly in the session of 1895.

— (5.) —

MEMO *in re* Treaty Obligations.

TREATY between TRANSVAAL STATE and PORTUGAL ratified by Her Majesty's Government, October 7th, 1882.

Favored Nation Clause, benefits of which were claimed by other nations.

Sub-section 5 of Art. 2 of Treaty reads:—

"They shall be exempt from all forced loans and from any extraordinary taxes that are not general and established by law, as well as from military service either at sea or on land."

VOLKSRAAD RESOLUTION of 5th May, 1876.

Art. 30. Local Laws, Vol. 1, page 642.

Art. 30.—The Volksraad confirms the Treaty entered into between His Honour the President and His Majesty the King of the Netherlands, with thanks to His Honour for the services rendered through same to land and folk.

(*N.B.*—This Treaty was never published or subsequently ratified by British Government under the Convention)

PART II.

ADMINISTRATIVE.

— (1.) —

EXTRACTS FROM THE OFFICIAL MINUTES OF THE VOLKSRAAD.

Memorial requesting that the islands in the Vaal River be granted or sold to the owners of land adjoining the river. Minutes of Volksraad of 1889—Art. 465.

The report of the Memorial Commission is as follows:—

"Your Commission recommend that the Honourable the Government be empowered, immediately the settlement regarding said islands has been arrived at with the Orange Free State, to sell the islands referred to by public auction and to give memorialists notice hereof."

Memorial Commission's report confirmed.

— (2.) —

Memorial from Heidelberg asking the Raad to instruct the Government to make dams to supply the town with water. 1890—Page 92. Art. 237.

Art. 238. Raad instructed Government to make provisions to supply place with the necessary water. Art. 238.

— (3.) —

Memorial praying that the Government Erf in Heidelberg upon which the source of the water supply of Heidelberg is situated be retained by Government for the public's use. Art. 239.

Granted.

— (4.) —

Memorials praying for bridges to be built over certain rivers. Minutes of 1890. Page 285. Art. 1121.

Raad refer memorialists to Resolution No. 359 of 1888, in which Government is instructed to make bridges where necessary.

— (5.) —

The Volksraad instructs the Government to frame regulations defining the size of public outspans and the width of public roads and submit the draft regulation to the Raad next session for treatment. Minutes of 1890. Page 294. Art. 1141.

— (6.) —

Government submitted a proposal to lease Government grounds on certain terms for the purposes of emigration. Minutes of 1890. Page 301. Art. 1154.

Raad refused its sanction.

— (7.) —

Memorial requesting a reduction of house rent of Government cottages occupied by officials at Krugersdorp. Minutes of 1890. Page 277. Art. 1086.

Refused.

— (8.) —

The Government submitted to the First Raad for confirmation a resolution of the Executive Council compelling persons to walk over bridges and regulating the speed of vehicles, &c. First Raad. Minutes of 1891. Page 47. Art. 94.

Confirmed by Raad.

— (9.) —

Resolution of Second Volksraad refusing to dissolve the Divisional or District Council of Lydenburg submitted to First Raad for confirmation. First Raad. Minutes of 1891. Page 132. Art. 351.

Accepted as notice.

— (10.) —

Minutes of First Volksraad, 1891. Page 145. Art. 380.

Memorial asking the Raad to grant a subsidy of 150*l.* for the road from Johannesburg—Hekpoort.

"Memorial Commission recommends that the amount be granted if the financial state of the country can bear the strain.'

Volksraad confirms the Memorial Commission Report.

— (11.) —

Minutes of First Volksraad, 1891. Page 220. Art. 654.

Memorials presented to First Volksraad from Dutch Church of Vryheid asking for a grant of land.

Refused.

— (12.) —

Minutes of First Raad, 1891. Page 245. Art. 773.

A memorial was presented to First Raad relative to the hire and leasing of Government lands, and praying that the law be amended accordingly.

First Raad refer memorial to Second Raad, who instruct the Government to amend the law as desired by memorialists and after publication submit it to Second Raad at following session.

— (13.) —

Minutes of First Volksraad, 1891. Page 296. Art. 952.

"The First Volksraad, taking into consideration the item on the order—Road Inspector Pretoria—Natal, 500*l.*; taking into consideration the whole section (department), taking into consideration point 2 of Art. 2 of the Estimates, Commissioner's report, and of the Memorial Commissioner's report, also under consideration.

"Taking into consideration the great expenditure in connection with this section.

"Resolves: To discontinue the whole section from Road Inspector, Pretoria—Natal to and including Barberton, but direct the Government to regulate the work of the discontinued sections and the abolished offices (with the exception of the Road Inspector, Middleburg—Roossenekal, &c., this being by this cancelled).

"Further, the Raad instruct the Government to follow the suggestion made by the Estimates Commission, for the further construction and repairing of roads, or such other regulation as the Government consider necessary."

— (14.) —

Minutes of First Volksraad, 1893. Page 228. Art. 539.

A resolution was passed instructing the Government not to lease any more Government ground until the general survey is completed, except from month to month; and to draw up regulations regarding the leasing of ground, to be confirmed by the Raad.

Minutes of First Raad, 1895. Art. 646.

Matter again discussed, Government not having framed the regulations. Government again instructed to draw up the regulations in terms of Resolution 539 of 1893 and to publish them for the information of the public.

Minutes of First Volksraad, 1896. Page 856.

Regulations after publication were treated by the Raad and passed after amendment (*vide* Art. 2238) and became law.

— (15.) —

Minutes of Second Volksraad, 1895. Page 58. Art. 71.

State Secretary submitted a draft agreement lowering the tariff for cable messages with cable companies for confirmation of Raad.

The Raad confirmed the agreement.

— (16.) —

Minutes of Second Volksraad, 1895. Page 76. Art. 78.

Application to Second Raad for restitution of certain money paid on account of mining lease obtained from Government referred to First Raad.

— (17.) —

Minutes of Second Volksraad, 1895. Page 199. Art. 430.

Letter from Government to Second Volksraad pointing out that the roads in Krugersdorp Gold Fields are in a bad state, and therefore requests Raad to grant it permission to appoint a road inspector.

A member wished to know why in this instance Government came to the Raad, whereas the other road inspectors were appointed without consulting the Raad.

Wolmarans, Member of Executive, replied—

"It was difficult to give the information, but he believed it was because Krugersdorp had just been proclaimed a district, but did not appear in the Report (Report of the Head of Public Works), and the report was there for confirmation "or rejection."

— (18.) —

Minutes of Second Volksraad, 1895. Page 379. Art. 922.

Memorial from the Balkis Gold Mining Company to have royalty upon gold reduced. Balkis Company in possession of an exclusive right to mine gold on the Government farm Graskop.

Raad resolved to send the memorial to Government for it to deal in the question, subject, however, to the confirmation of the Raad during present sitting.

From the debate it appears that the Raad in the previous session decided to reduce the royalty paid by the Clewer Estate Gold Mining Company for exclusive right to mine on a piece of Government ground.

Government subsequently reported that it had not been able to arrange amendment of Concession, but would report fully next Session. Page 672. Art. 1593.

Letter of Government accepted as notice.

— (19.) —

Memorial from Klerksdorp requesting that a Government Inspector for the district be appointed. Minutes of First Volksraad, 1897. Page 632. Art. 112.

The report of the Memorial Commission reads as follows :—

"The Commission being of opinion that this is a matter belonging to the Honourable the Government recommend your Assembly to refer it to the same."

— (20.) —

The Estimates Commission, in their report, state— Minutes of First Volksraad, 1898. Art. 8.

Fixed Salaries.—"The Executive Council viewing the present state of the country's finances do not mean to propose any increase in the salaries, and to check the increase of officials in the various departments as much as possible.

"Your Commission have agreed to this, also to certain small increases and decreases suggested in a very few isolated cases, and which were, in their opinion, justified."

Raad agreed to Commission's report, Art. 8. Page 83. Art. 313.

— (21.) —

The First Volksraad passed the following resolution during the consideration of the report of the Special Volksraad Commission appointed to inquire into the cause of the delay in connection with the construction of the Pretoria-Pietersburg Railway Line. Minutes of First Volksraad, 1898. Page 338.

"Art. 532. The First Volksraad taking into consideration the section Arts. 54 to 62, "Plans of the 'Global' Survey between Warm Baths and 'Nylstroom' of the Commission report now under consideration ; Art. 532.

"Considering the delay and loss caused by the unwillingness of the technical inspector who refused to carry out the instructions of the Government Commissioner of Railways ;

"Considering the State cannot retain officials who will not listen to those placed above them, also not listen to Volksraad resolutions ;

"Resolve : 'To instruct the Hon. the Government to immediately dismiss the said Technical Inspector Mr. Mooyen from the State's service, and Resolve further to accept that portion of the report for notice.'"

— (22.) —

A memorial from Krugersdorp requesting the Raad to compensate A. S. Oosthuizen, or in the words of the Memorial to grant him a bonus of 200*l.* to cover loss suffered by him in carrying out his contract, viz., the construction of a portion of the road Pretoria—Krugersdorp. Minutes of First Volksraad, 1898. Page 870.

The Raad refused. Art. 1265.

— (23.) —

Request of Government to First Raad to be allowed to grant the State Mining Engineer a sum of money for special services rendered the Government outside his duties as State Mining Engineer. Minutes of First Volksraad, 1899. Page 297. Art. 283.

The Executive Council having passed the following resolution :—

"The Executive Council having heard the verbal explanation of the State Mining Engineer regarding his request, acknowledging the justice thereof, but not having the power to give effect thereto,

"Resolve : 'To lay the matter with its recommendation before the Hon. the First Volksraad during the present sitting.'"

The Raad refused to confirm the Executive Resolution. Page 298. Art. 285.

— (24.) —

The First Volksraad, taking into consideration the list of newly appointed officials now on the order, and specially of the name of J. H. du Plessis, fourth clerk of the "Chief of Prisons," being informed that this person is a son of the present acting Chief of Prisons, and thus the son is employed in the same office as the father, taking into consideration that such is against the present provisions of the law, Minutes of First Volksraad, 1899. Page 439. Art. 442.

"Resolve : 'To instruct the Honourable the Government in this and other cases wherein it has not acted according to law to immediately take the necessary measures, so that the law is observed.'"

— (25.) —

Minutes of First Volksraad, 1899. Page 830. Art. 984.

Memorial to Raad, praying that the Responsible Clerk of Haenertsburg be granted an assistant. Referred to Government, the Raad not having the power to appoint officials.

— (26.) —

Minutes of First Volkaraad, 1899. Page 887. Art 1087.

Memorial to Raad relative to correspondence with heads of Departments, in accordance with Government Notice No. 114, dated 8th March, 1899.

The Memorial Commission report as follows :—

> "Your Commission consider it advisable, in order to accelerate the administration, that letters shall be sent direct to the Chief of the Department concerned. It appears, however, that the public are not acquainted with the circumstances through which various letters are wrongly addressed, but, according to information obtained, that such letters are sent without delay to the Department concerned.
>
> "Your Commission recommend your Assembly to inform memorialists hereof."

Art. 1088.

Report of Memorial Commission confirmed.

— (27.) —

Minutes of First Volksraad, 1899. Page 941. Art. 1189.

Several Memorials, signed by 117 persons, requesting that C. G. de Jonge, Secretary to the Department of Education, be dismissed for writing letters containing defamatory and libellous statements to the paper called the "Christian School Paper."

Also one Memorial signed by fifteen persons, requesting that de Jonge be retained in the Civil Service.

The Memorial Commission reported :—

> "Your Commission is of opinion that an official is a servant of the public, and should employ his time only in attending to his official duties required of him by law, and when an official abuses his position, and thereby gets himself hated by the public, he cannot remain any longer an official.
>
> "Therefore your Commission feel compelled to recommend that the Memorials be sent to the Hon. the Government with instructions to accede to the request of the majority of memorialists."

Art. 1200.

Raad confirmed the Memorial Commissioners' Report, and instructed Government to immediately dismiss Mr. de Jonge from the service of the State.

PART III.

MUNICIPAL.

EXTRACTS FROM LOCAL LAWS AND VOLKSRAAD MINUTES OF TRANSVAAL.

— (1.) —

Volksraad Resolution, 13th October, 1868:—

"Art. 140. The Volksraad, having considered the application of Dr. Poortman for a piece of ground in the town pasturage (town lands) of Potchefstroom,

"Resolve: 'Not to grant the ground asked for; also not to sanction or confirm the sale of land in town pasturages which has not taken place by Volksraad resolution, and that in future no piece of ground in the town lands of any town may be granted or sold.'"

See Local Laws. Vol. 1, p. 310. Art. 140.

— (2.) —

Volksraad Resolution of 10th June, 1869:—

"Art. 195. The Raad resolves to answer that it is impossible, according to Art. 140 of September, 1868, of the Resolutions of the Volksraad, to sell town lands, but instructs his Honour the President and the Executive Council to investigate the case, and, if considered useful, to lease memorialists a piece of ground for a period of ninety-nine years at a ground rent which must be paid yearly, and upon condition that a proper mill shall be erected."

See Local Laws. Vol. 1, p. 318. Art. 195.

— (3.) —

Volksraad Resolution of the 6th September, 1871:—

"Art. 26. The Raad resolves to refer memorialists to the Executive Council, with instructions to that body to put up to public auction the requested ground for a period of thirty-three years, subject to the best conditions obtainable for the Government, to be leased at an upset price of not less than 30*l.* per year, with this understanding, that the inhabitants of Rustenberg shall not be prejudiced thereby, and that they give their consent thereto."

See Local Laws. Vol. 1, p. 417. Art. 26.

— (4.) —

Various applications to Raad for instructions to be given to Government to sell certain Government lands by public auction, to grant Government lands, to lease Government lands, &c.

Volksraad Minutes 1889. Arts. 580, 501, 455, 454, 514.

— (5.) —

The Volksraad was moved to consider a certain memorial which, owing to unforeseen circumstances, was not handed in before the date stipulated by law.

June 22nd 1889, Art. 494.

The Volksraad agreed to consider said memorial.

June 25th 1889. Art. 518.

The memorial was signed by 3,565 inhabitants of Johannesburg drawing attention to the sanitary condition of Johannesburg, and asked that provision be made for the establishment of a Town Council or local administration.

July 15th 1889. Art. 964.

The Volksraad resolves as regards the taking of sanitary measures to refer the memorial to the Government as having the care and the power thereof in its hands, and resolves further that no Town Council shall be established in a Stand Township.

Art. 965.

— (6.) —

Letter from Government dated 15th May 1889, submitting to Volksraad the sanitary regulations for Klerksdorp with proposed additional articles for confirmation.

May 17th 1889. Art. 147.

The Raad confirmed the regulations after amending and altering certain articles.

— (7.) —

Letter from Government to Raad dated 14th May 1889, submitting a memorial from the holders of Erven in Klerksdorp requesting the Government to alter Clause 3 of the contract with Government.

May 18th 1889. Art. 182.

" The Executive, taking into consideration that it is beyond the power of the Executive to make any alteration in said contract, &c., eventually referred it to a special Commission to enquire into the matter, and the Special Committee's report and all documents were submitted to the Volksraad for its decision."

— (8.) —

June 28th 1889. Art. 591.

Memorial to Raad from Potchefstroom requesting a grant of land in the town of Potchefstroom for hospital purposes, also funds for the erection of a hospital.

The Memorial Commission reported :

" Your Commission recommend the Honourable the Volksraad to instruct the Honourable the Government to institute an inquiry into this matter, and if necessary to make provision to meet this want."

Raad confirmed by unanimous vote.

— (9.) —

Minutes 1889. 28th May.

The Government addressed a letter to the Raad dated 28th May 1889, for permission to make regulations for the division of the water of the newly proclaimed town of Ventersdorp, also, with the consent and advice of the Executive, to make regulations for other towns and places, where necessary.

A memorial was presented to the Raad in 1887 by the inhabitants of Ventersdorp requesting the Raad to confirm the water regulations attached to the memorial. The Raad referred the regulations to Government per Art. 603 of June 1887 for consideration.

Raad passed the following resolution :—

86. " The Volksraad, taking into consideration Executive Council resolution now on the order, resolve to empower the Government to draft water regulations chiefly for Ventersdorp, Klerksdorp and other towns where it may be found necessary."

— (10.) —

June 26th 1889. Art. 551

Memorial to Raad requesting that regulations be drawn up regarding the use of tables for the sale of vegetables at Johannesburg market.

The report of the Memorial Commission was as follows :—

" Your Commission cannot agree with request of memorialists, because the market house and the vegetable tables are public institutions, where everyone is free to sell his products."

The Raad agreed to Commission's Report.

— (11.) —

June 14th 1889. Art. 419.

In re township of Ohrigstad the Raad gave the Government permission to sell erven by public auction, also to lease portions of town lands in accordance with Volksraad resolution Art. 951 of 22nd July 1885.

— (12.) —

July 9th 1889. Art. 804.

The Raad taking into consideration the item " Town Inspector, 350*l.*" ; considering the statement of the Estimates Committee regarding the enormous amount paid for the repairs of streets and so forth in the town of Pretoria ; considering the unsatisfactory state of the streets, bridges, and furrows, and therefore the unsatisfactory result of the works in connection with this expenditure ;

Resolve to confirm the item on the order, but instruct the Government to institute a thorough inquiry into all the circumstances as well as to whether the officials implicated did or did not do their duty, and then to act accordingly, and to provide that the work is properly regulated.

— (13.) —

June 26th 1889. Art. 542.

Memorial presented to Raad for a grant of Potchefstroom town lands for the purpose of a recreation ground for Potchefstroom.

Memorial Commission reported against making the grant, which was confirmed by the Raad.

— (14.) —

1889. Art. 1182.

The Government, having purchased Bloemhof for a township, found that there were certain disputes, claims, &c., *in re* erven sold by previous owner, asked the Raad for permission to deal with the matter.

1889. Art. 1183.

The Raad granted the request, and further instructed the Government to proclaim Bloemhof as a town if such has not already taken place.

— (15.) —

Memorial to Volksraad praying that a piece of ground of the town lands of Potchefstroom be set aside for the public of Potchefstroom as a park or public garden. June 26th 1889. Art. 543.

The Memorial Commission's Report reads as follows:—

"Your Commission recommend the Hon. the Volksraad to instruct the Government in this matter, if desirable, to grant a piece of ground for said purpose."

Confirmed by the Raad.

— (16.) —

R 7194b—1890. B.B. 1900—1890.

Government Office, Pretoria, 8th May 1890. Minutes of Volksraad 1890. Page 21. Art. 74.

The Hon. Mr. Chairman of the Hon. the Volksraad.

Honourable Sir,

I have the honour for your information and for treatment by the Hon. the Volksraad to bring to your notice Executive Council Resolution, Art. 357, dated 8th May 1890, of which the following is a copy:—

"On the order discussion over the regulation of towns in the South African Republic published by Government notice of the 5th of August 1858.

"The Executive Council considering that these regulations have not been expressedly confirmed by the Hon. the Raad, although always considered as law, and considering that it is desirable to prevent questions as to its legality being offered.

"Resolve: 'To propose to the Hon. the Raad, that it declare and resolve that said regulations for the towns in the South African Republic are valid and remain so in so far as they have not been amended by subsequent laws, and

"Further: 'The Executive Council considering that it is necessary that further and better provision should be made for the maintenance of order, and the promotion of the sanitary conditions of towns.'

"Resolves further: 'To propose to the Hon. the Raad that the Government be empowered, with the consent of the Executive Council, to make such general and special provisions and regulations, be it by alterations or be it by additions to said regulations, as it may find necessary in the interests of good order and peace and the sanitary conditions of the towns or town. Such regulations and provisions to have the force of law upon publication in the "Staats Courant."'

"I have the honour, &c.

"(Signed) Dr. W. J. Leyds, State Secretary."

Article 77.—The Raad, taking notice of Executive Resolution, No. 357, dated 8th May, 1890, as set forth in the Government Missive of 8th May, 1890— Minutes of 12th May 1890. Page 21. Art. 77.

"Resolve and declare: That the regulations for the towns of the South African Republic, published by Government notice of 5th August 1858, are valid, and remain so in so far as they have not been amended by subsequent laws and Volksraad resolutions.

The Raad further—

"Resolve: To empower the Government, with the advice and consent of the Executive Council, either by additions or amendments to said regulations, to make such general or special provisions as they may deem necessary in the interests of order and health of the towns or of a town. Such regulations and provisions to have the force of law after publication in the "Staats Courant," and to remain of force until the Volksraad shall decide further thereon, not later than the ordinary ensuing session of the Volksraad."

— (17.) —

Letter from Government enclosing a resolution of the Executive Council for confirmation of Raad granting four Erven in Pretoria to the Dutch Church. Minutes of 1890. Page 332. Art. 1205.

Granted.

— (18.) —

Government asked the Raad to confirm a certain arrangement relative to the maintaining of the Church Square of Pretoria as a public square on condition that certain erven are given to the Church. Minutes of 1890. Page 72. Art. 188.

Granted.

— (19.) —

Application of D. J. Joubert to renew a right previously granted to him to erect a mill in the town of Wakkerstroom. Minutes of 1890. Page 276. Art. 1079.

Granted, and Government instructed to enter into contract.

— (20.) —

Memorial for a grant of money for purpose of digging wells in the town of Boksburg. Minutes of 1890 Page 95. Art. 250.

Refused.

— (21.) —

First Raad Minutes of 1891. Page 42. Art. 80. (N.B. *See* Resolution 77 of 12th May 1890.) Art. 82.

Government submitted for approval of Raad, in accordance with the powers given to it by the Raad, *vide* Art. 77 of 12th May 1890, certain amendments to the Town Regulations of the 5th of August 1858.

Art. 82. The Raad considered and confirmed the proposed Amendments.

— (22.) —

Minutes of First Volksraad, 1891. Page 82. Art. 179.

Raad refuses to sanction the erection of post boxes in public places.

— (23.) —

Minutes of First Volksraad, 1891. Page 387. Art. 1265.

Government submits a resolution of Executive asking for permission to frame regulations, inflict fines, &c., regarding the making of bricks, quarrying of stone and burning of lime upon Government ground inclusive of town lands and on proclaimed private ground. Same to have the force of law upon publication.

Raad confirms the request, but the provisions *in re* fines and matters financial to be submitted to the Raad at the ensuing session for confirmation.

— (24.) —

Minutes of First Volksraad, 1891. Page 138. Art. 366.

Memorials presented to First Volksraad requesting the Raad to appoint a water fiscal (water bailiff) for the town of Piet Potgietersrust.

— (25.) —

Minutes of First Raad, 1891. Page 297. Art. 960.

Raad discuss the Sanitary Inspector of Pretoria, Inspector of Town Lands, &c., and abolish the office of Inspector of Town Lands, being a new office and unnecessary.

— (26.) —

Minutes of First Raad, 1891. Page 370. Art. 1208.

Memorial asking that owners of Erven in Piet Potgietersrust be compelled to fence their Erven and clear them of trees.

Memorial Commission referred Memorialists to the Town Regulations of 1858, Article 21, according to which every owner of Erven is compelled to enclose same.

Raad agreed to report, and pointed out that every owner of Erven in Piet Potgietersrust according to the Occupation Law is compelled to occupy.

— (27) —

Report of the Estimates Commission appointed by resolution of the Volksraad, Article 18, dated 5th May, 1891.

Minutes of First Volksraad, 1891. Page 221.

* * * * * *

"1. Upon the cost of delivering gravel for the roads and streets, the making of water furrows, &c., in and around Pretoria.

"Your Commission find herein occasion to remark that large sums have been spent, so much so, that the officials under whose control the work was, felt compelled, owing to the high prices charged for the work, to stop it. The work was not given out by tender, and the Commission is of opinion that insufficient control is the cause that the above mentioned works cost so much. For the streets of Pretoria, including the market and botanical garden, 42,327*l.* was expended.

"The cost of the road from Pretoria to Six-Mile-Spruit amounted to 5,357*l.* 7*s.*

"2. Upon the advances to road overseers for repairing the roads.

"Your Commission were informed of the manner in which the advances were expended and accounted for. With a view to the difficulties connected therewith, the large amount, as well as the long time spent on some roads, it is preferable that such work be done by tender rather than under the present system and control with this understanding, however, that in case of every tender for public works a commission is chosen capable and prepared to properly inspect the requisite work, subject to the control of the chief of public works.

"3. Upon the expenditure on bridges, such as over Six-Mile-Spruit, Aapjes river, and at Klerksdorp.

"Your Commission, satisfied that blunders have been committed in the erection and construction of the said bridges, which has caused, and still will cause, important expenditure out of the treasury, which your Commission feel they can point out, with every confidence, so that measures may be taken by which the expenditure caused in this way will not, as hitherto, be at the cost of the Government."

First Volksraad Minutes of 1891. Page 349. Art. 1166. . .

Raad confirms report of Committee.

— (28.) —

1892. Page 431. Art. 1302.

"Art. 1302. Letter from the Government to the Volksraad dated 13th July 1892, enclosing Executive Resolution No. 27 of 14th January, 1892, published in the 'Staats Courant' of the 3rd February, 1892, containing regulations for the delivery of water to the inhabitants of Pretoria. The Raad are requested to consider and confirm said regulations, also to empower the Executive from time to time to amend them.

"(Said regulations are for delivery of water by the Pretoria Waterworks Company, Limited).

"Executive Council Resolution, Art. 27, dated 14th January, 1892, containing rules and regulations for the delivery of water to the inhabitants of Pretoria were before and after an adjournment of 15 minutes read, and are as follows:—

"Copy of Executive Resolution, Art. 27, dated 14th January, 1892.

"On the Order Minute, R2450/88, containing correspondence about the Water-leading Concession of Pretoria;

"Executive Council having taken into consideration the rules and regulations for the delivery of water and the provisions for punishment in connection therewith, sent in by the Water-leading Company;

Considering that the bringing into force of such provisions is a matter of public interest;

"Taking into consideration Volksraad Resolution, Art. 77, dated 12th May, 1900."

(*N.B.*—Volksraad Resolution, Art. 77, of 12th May 1890, specially confirmed the Town Regulations of 5th August 1858; thus the Government practically acknowledge that they must act in accordance with such regulations.)

"Resolve:—1. To confirm the following rules and regulations for the deliverv of water to the inhabitants of Pretoria."

Here follow the regulations under the following heading:—

"PRETORIA WATER-LEADING COMPANY, LIMITED

"Rules and regulations for the delivery of water to the inhabitants of Pretoria."

The question was fully debated, and the following resolution passed:—

"Art. 1304. The First Volksraad, taking into consideration the Government's letter BB 1815/92, with Executive Council's resolution, Art. 27, dated 14th January 1892, now on the Order; Art. 1304.

"Resolve: Not to agree with said Executive Council's resolution."

— (29.) —

A memorial from inhabitants of Pretoria praying the Raad not to use the town lands of Pretoria for the purpose of compensating with erven persons holding burgher rights, and that portion of the town lands placed at the disposal of the sanitary contractor be taken from him. Minutes of First Raad, 1893. Page 179. Art. 425.

The Memorial Commission report reads as follows:—

"Your Commission consider it difficult to alter a passed Volksraad resolution; the more so, because the inhabitants of the district of Pretoria can with difficulty be compensated in any other way than with erven.

"As regards the question about the piece of ground given to the sanitary contractor, your Commission is of opinion that it is difficult to propose alterations, because a contract has been entered into for ten years in the interests of the town and its inhabitants."

The Raad confirmed the Memorial Commission's Report. Art. 427.

— (30.) —

"Art. 818. The Second Raad, taking into consideration the report of the Head of Public Works now on the Order, taking into consideration that according to law the treatment of roads and bridges now belongs to the Second Raad, and taking into consideration the fact that said report makes no mention of money expended upon roads or streets in towns, notwithstanding the fact that much money is expended upon roads, &c., in towns, Minutes of Second Volksraad, 1893. Page 383. Art. 818.

"Resolves: That in future report shall also be made to the Hon. the Second Volksraad of all work done to roads and streets in cities and towns, and what amount has been expended on said roads or streets. Resolves further to accept the report as notice."

— (31.) —

The Government wrote to Second Raad submitting a proposal made by the Head of Public Works suggesting the reorganisation of the system followed in road-making, control, &c. Minutes of Second Volksraad, 1893. Page 387. Art. 834.

The Second Raad considered the scheme, and amended it accordingly.

— (32.) —

The Government laid before the Raad an application from Commandant Schutte for certain Stands in Johannesburg as compensation for his burgher-rights. Minutes of the First Volksraad, 1893. Page 440.

"The Government considering that it has not the right to grant the request,

Resolves: "To leave it to the judgment of the Raad."

The Raad refused.

— (33.) —

"The Second Raad taking into consideration Art. 6 of the Report of Head of Public Works, and from which it appears that the Government has not carried out the resolution of the First Raad of 1890 to supply Heidelberg with water." Minutes of Second Volksraad, 1895. Page 193. Art. 411.

Resolves: "To instruct the Government to carry out said resolution as soon as possible."

— (34.) —

Art 412.

"The Second Raad taking into consideration Art. 6 of Sect. 6 of the Landdrost's report contained in the report of the Head of Public Works, and from which it appears that the public streets of Heidelberg are in a very bad state."

Resolves: "To instruct the Hon. the Government to place a sum of money at the disposal of the Landdrost of Heidelberg so that he can by means of tender or otherwise place the streets of Heidelberg in good order."

— (35.) —

Minutes of Second Volksraad, 1895. Page 211. Art. 464.

Cab regulations for Pretoria submitted by First Raad to Second Raad for confirmation. Second Raad treated and confirmed.

— (36.) —

Minutes of Second Volksraad, 1895. Page 493. Art. 1281.

Discussion in Second Raad regarding the sale and purchase of mules also the purchase of a traction engine used in connection with the street making in Pretoria. Landdrost appeared before the Raad, together with Head of Public Works out of whose report the question arose. The President when asked on a previous occasion why the streets of Pretoria were not repaired replied "because the Landdrost had not asked for the money to repair the streets."

Minutes of First Volksraad, 1895. P. 694, Art. 1635. P. 680, Art. 1614. P. 680, Art. 1616. (N.B. *See* Art. 78 of Grondwet and how closely it was united.)

— (37.) —

Sanitary regulations for Krugersdorp, Klerksdorp and Barberton submitted to Raad, treated and confirmed.

— (38.) —

Minutes of Second Raad, 1895. Page 697. Art. 1644.

The member for Pretoria expressed the wish in the Raad that sanitary regulations be drafted for Pretoria.

"President stated he was not against it, but there was a law for the establishment of Town Councils, and let the inhabitants declare that they wish to act under that law. The Government could only draft sanitary regulations for Stand towns* *vide* the law."

— (39.) —

Certain Resolutions passed by Second Raad in 1896.

1896.

Art. 410. *In re* lengthening the Market street of Pretoria.

Art. 483. Repairing of streets, Ermelo.

Art. 772. Removing natives from town lands.

Art. 776. Regulations to enable Government to lease ground to the poor of Pretoria.

Art. 1379. Construction of a dam at Mayerton.

1897.

Art. 364. *In re* construction of dam and waterfurrow for Pietersburg.

Art. 375. Unsanitary state of Pretoria.

Art. 403. Complaints against tannery in Pretoria.

Art. 581. Lease of ground to C. Von Brandis, Johannesburg.

Art. 611. *In re* Market House of Johannesburg.

Arts. 797 and 823. Survey of coolie and native locations.

Art. 949. Cancellation of lease to "The Exhibition Society" of a Government square in Johannesburg by Second Raad.

When the resolution of the Second Volksraad was sent up to the First Volksraad for confirmation it was proposed by Vorster and seconded by De Beer that First Raad reconsider the Second Raad resolution.

Negatived 14 to 10.

— (40.) —

Minutes of First Raad, 1897. Page 585. Art. 976

Memorial from Vryheid district and town asking that the size of the town lands be increased. Referred to Government to inquire as to size, value and price of ground, and report to Raad at ensuing session.

— (41.) —

Minutes of First Volksraad, 1897. Page 136. Art. 66.

Government, acting under instructions from Volksraad, purchased a piece of land for town lands for Johannesburg. Public complained that ground was too far away, and useless for the purpose,

* Mining Townships.

and Government had not acted in accordance with Raad · esolution, which stated the Government had to purchase ground suitable for the purpose.
The purchase was confirmed.

— (42.) —

Government came to Raad for permission to place at the disposal of a company a piece of Government ground for a period of twenty-one years for the purpose of erecting a wash-house for the poor of Johannesburg. Raad granted the permission provided the ground be leased to two or three of the Relief Committee of Johannesburg as trustees.

Minutes of First Volksraad 1897. Page 623 Art. 1087

— (43.) —

Letter from Government requesting the Raad to authorise it to lease small portions of the town lands (50 feet by 100 as building lots) to poor people of such towns as they may deem necessary.

Minutes of First Volksraad, 1897. Page 737. Art. 1369.

Raad agree to allow Government to lease Government ground in the various districts, but not town lands, as it considers it undesirable that the poor should congregate around towns.

Art. 1370

— (44.) —

Memorial requesting that a sanitary inspector for Vryheid be appointed.
Referred to Government to act according to circumstances.

Minutes of First Volksraad, 1897. Page 663. Art. 1121.

— (45.) —

Memorial from Vryheid requesting Raad to instruct Government to appoint a sanitary inspector.
Memorial Commissioners suggest Government be instructed to inquire into the matter as to the necessity of making such an appointment, and to act accordingly.

Minutes of First Volksraad, 1898. Page 803. Art. 1111.

Raad taking into consideration Resolution 1121 of 1897 instruct Government to grant request of memorialists so soon as possible and when it shall appear from investigation such is necessary.

Minutes of First Volksraad, 1898. Page 805. Art. 1113.

— (46.) —

Memorial from v. d. Hove to Raad asking for concellation of a contract entered into with Government for erection of a water mill in Vryheid, or to compensate him.

Minutes of First Volksraad, 1898 Page 899.

The Raad. Resolved: "To refer the matter to Government, and expressed the desire that the Government would find terms to meet memorialists as regards the making of a new contract if memorialists so desire, &c."

Art. 1328

— (47.) —

Letter from Government enclosing a resolution from the Executive Council regarding an application by the widow C. J. Van Wyk, for a piece of ground (stand) 100 by 150 feet between Ockse and Pietersen Streets, Johannesburg.

Minutes of First Volksraad, 1898. Page 958.

Executive resolution reads:—

"The Executive Council considering that the late C. J. Van Wyk has served the State faithfully as an official for ten years, and that the applicant, with her three children, has been left unprovided for through the sudden death of her husband, taking into consideration the recommendation of the Mining Commission of Johannesburg, and the Minister of Mines, and the circumstances of the case, also the fact that the Executive Council does not possess the power to grant the request."
Resolves: "To submit said request with its recommendation to the First Volksraad for treatment."

"Raad resolved not to agree with the request entirely, but to instruct the Government, if possible, to grant applicant stands on a proper site for a residence, strictly in conformity with the Gold Law as regards the granting of stands."

Art. 1391.

— (48.) —

The estimates for the current year (1899), after treatment by the Estimates Committee specially appointed from amongst its own members, were submitted to the Raad.
The section, "Public Works," having been duly considered, the following resolution was passed:—

Minutes of First Volksraad, 1899 Page 50.

"Art. 124. The First Volksraad, taking into consideration section 'Public Works,'
"Resolves: 'To confirm this section as proposed by the Executive Council, with the exception of the responsible clerk, 500*l.*, and book-keeper 500*l.*, appearing under the head 'Administrative Section.' These items to be erased; and resolve further to confirm the section, 'Roads,' as proposed by the Executive Council.'"

Art. 124.

"Art. 131. The First Volksraad resolves to confirm section, 'States Printing Office,' as proposed by the Executive Council, with the exception of the item ten pupils

Page 51. Art. 131.

(apprentices) under the heading 'Pupils,' but to confirm these as proposed by the Estimates Commission."

Page 57. Art. 131. "Art. 131. The First Volksraad resolves to confirm the items under the Landdrost of Pretoria, as appearing in the columns proposed by the Executive Council, with the exception of the items—

	£.
One park overseer	200
Four native servants at 24*l.*	96

to be erased.

"The Raad resolves further to erase the items—

	£.
One town engineer	650
Four town inspectors at 350*l.*	1,400
One inspector of slaughter-poles	350
Three water-bailiffs at 225*l.*	675
One town-lands overseer	250

"To take effect from 1st April, 1899, after which same must be paid out of the subsidy to be granted."

(*N.B.*—All the officials mentioned in the foregoing resolution were part of the Landdrost's department, and under control of the Landdrost or Magistrate of Pretoria.)

— (49.) —

Minutes of First Volksraad, 1899. Page 59. Art. 160. "Art. 160. The First Volksraad resolves to confirm the items under 'Utrecht' with the alteration of the item water-bailiff, and to fix this at 30*l.*" *

— (50.) —

The Raad resolves to refer to the Hon. the Government the memorial regarding a water-bailiff at Paul-Pietersburg, with instructions to act in this matter according to circumstances, and to reply to memorialists accordingly.

— (51.) —

Minutes of First Volksraad, 1899. Page 830. Art. 985. Memorial to Raad, praying that the regulations for the water-bailiff of Schoon Spruit be amended.

Memorial Commission cannot agree with the request, and recommend your Assembly not to give effect to the memorial, and to reply to memorialists accordingly.

Art. 987. The First Volksraad, taking into consideration the memorial on the order, resolve to confirm that report.

— (52.) —

Minutes of First Volksraad, 1899. Page 853. Art. 1033. Memorial to the Raad, asking that the stand township of Haenertsburg be changed to an erven township.

Memorial Commission report:

"Your Commission cannot agree with the request of memorialists, and recommend your Assembly not to give effect to the request of memorialists, and to answer memorialists accordingly."

The Raad confirmed the Commission report.

— (53.) —

Art. 1034. Memorial praying that the waterfurrows of the town of Christiana be improved.

Minutes of First Volksraad, 1899. Page 853. Art. 1036. The Memorial Commission recommend.

"Your Commission recommend your Honourable Assembly to refer this memorial to the Hon. the Government, with instructions to make an inquiry and to act in accordance with the circumstances."

Art. 1037. Raad confirms report.

— (54.) —

Minutes of First Volksraad, 1899. Page 1023. Art. 1344. Memorials were presented to the Raad praying that locations be granted to the towns of Standerton and Bethel.

The Memorial Commission reported:

"Your Commission recommend that your Assembly refer the matter to the Hon. the Government, with instructions to institute an investigation, and, if possible, to report to your Assembly thereon during this session."

Art. 1345. The discussion was closed, and the Commission's report accepted by acclamation.

— (55.) —

Minutes of First Volksraad, 1899. Page 853. Art. 1031. A memorial was presented to the Raad praying that the special regulations for the town of Christiana referred to by Volksraad resolution, Art. 157 of 7th June 1870, be withdrawn.

* Water-bailiff's salary was raised from £15 to £30 per annum.

The Memorial Commission recommend :

"Your Commission can agree with the request, and recommend to your Assembly to refer the memorial to the Hon. the Government, with instructions to withdraw these regulations, and to place the town of Christiana as regards administration, taxes, and town facilities on the same basis as other towns."

Report of Memorial Commission accepted by acclamation. Art. 1032.

— (56.) —

Memorials to Raad asking that steps be taken to supply the burgher right erven of the town of Zeerust with water. Minutes of First Volksraad, 1899. Page 859. Art. 1047.

Memorial Commission recommended :

"Your Commission recommend that your Assembly refer these memorials to the Hon. the Government, with instructions to institute an inquiry in this matter, and to report to the Raad in the ensuing sitting."

Raad confirms.

— (57.) —

A memorial praying that a market be established at Christiana, and to appoint a market master. Minutes of First Volksraad, 1899. Page 1024. Art. 1350.

The Memorial Commission recommended :

"Your Commission is of opinion that this memorial should have been sent to the Government, and therefore recommend your Assembly to send it there."

The Chairman, in reply to a question, stated: The Government, when applied to, obtained information from the Landdrost of the district affected, and then acted thereon.

PART IV

WAYS OF COMMUNICATION.

— (1.) —

VOLKSRAAD RESOLUTION, 3RD NOVEMBER 1874.

Art. 195. "The Raad resolves that with reference to Art. 15 of the Address to instruct the Government, in as far as the finances of the country may admit, to make and repair the principal roads, and to put tolls at the most suitable places." Local Laws. Vol. 1, p. 600.

— (2.) —

VOLKSRAAD RESOLUTION, 10TH JULY 1885.

Art. 776. "The Raad, taking into consideration the item, repairs of roads, &c., 2,000*l*., and the memorial connected therewith, confirm the item, and resolve further: Whereas it is a vital question, and the finances do not permit of a sufficient sum being placed upon the Estimates for the repairs of the principal roads to the goldfields in the district of Lydenburg, proceed to instruct the Government to call for tenders, and to enter into contracts with persons, and to which person or persons the Government is empowered to grant the exclusive right to erect tolls for a certain period of years on the principal roads, the Government to fix the tariff of the tolls when concluding the contract, and such tariff of tolls to be laid before the Volksraad at its first ensuing session, but with this understanding that the Government reserves to itself the right to take over such contract." Local Laws. Vol. 1, p. 136

— (3.) —

Certain memorials praying the Raad to have the road from the farms Goede Hoop to Tradouw proclaimed a public road. Minutes of Volksraad, June 21st, 1889. Art. 486.

The report of the Memorial Commission reads as follows :—

"Your Commission recommend the Hon. the Volksraad to refer this matter to the Government for investigation and then to act in accordance with the circumstances."

Memorial Commission's report was confirmed by the unanimous vote of the Raad.

In re proclaiming roads as public roads,

Two proclamations appear in the local laws by the Colonial Secretary of the interim Government declaring and proclaiming two roads as public roads, one dated the 24th day of October, 1879, and one dated 21st day of January, 1880.

In the discussion upon the Report of the Head of Public Works as to the right of Head of Public Works to change the course of a road over the farm of a certain Mrs. Uys. Head of Public Works replied :— Minutes of Second Volksraad, 1895. Page 182.

"That according to Art. 7 of the law regulating the responsibility of officials the defining of roads rested with the landdrost who, in conjunction with the field cornet acted in this matter."

Numerous roads were then discussed and agreed to.

— (4.) —

IN RE ELECTRIC TRAMWAY IN JOHANNESBURG, GRANTED TO J. P. LOMBARD, P. J. BOTHA, F. G. DE BEER, AND W. G. KELLER.

Government, per letter dated 18th June 1897, laid before the Raad the contract with above persons, the Executive having taken the following resolution :— BB. 1558/97.

"The Executive Council taking into consideration the First Volksraad resolution Art. 2249, of 7th December, 1896,

"Resolves to lay before the Honourable the First Volksraad for confirmation aforesaid contract, with the Executive resolutions having reference thereto, as set forth in Minute R 11451/95." Art. 376.

The contract resolutions, &c., were duly laid before the Raad, and the following resolution was passed :—

"The First Volksraad taking into consideration the Government's letter BB 1558/97 containing Executive resolution, Art. 448 of 1897, asking for the confirmation of a certain contract for the laying of an electric tram at Johannesburg, taking into consideration Volksraad resolutions, Arts. 150 and 592 of 1890, and Art. 2249 of 1896, whereby the

express consent of the Volksraad is required for the laying of such a tram. Further, considering that the construction of such a tram will take away the labour of an enormous poor population,

"Resolves not to confirm said contract."

Art. 2249. Resolution of 7th December 1896, of the First Volksraad referred to in preceding resolution :—

"The First Volksraad taking into consideration Art. 1042, contained in the Government's letter dated the 4th inst., and now under consideration,

"Taking into consideration that by the Volksraad resolution, Art. 150 of 1890, it is laid down that no one may construct a railway or tramway other than for animal power except with the consent of the Volksraad,

"Taking into consideration that the permission for the construction of all tramways and railways other than those drawn by animals, rests exclusively with the Volksraad, and considering the undesirability of giving that power into other hands,

"Resolves not to agree to said Executive Council resolution."

— (5.) —

Minutes of First Volksraad of 1898. Art. 1053 Page 763. *In re* Numerous Memorials *in re* the granting of Electric Power to Tramways, &c.

The Memorial Commission reports :

"That 22 memorials have been sent in to your Honourable body, relative to tramways, of which three containing 184 signatures are similar, and ask that to existing tramways and those still to be constructed neither steam nor electrical power shall be granted.

Sixteen similar with 501 signatures that no change may be made in the two tramways of Johannesburg as regards the motive power.

One memorial with 131 signatures not in future to grant horse or electric trams.

One with eight signatures of the Directors of the Johannesburg City and Suburban Tramway Company to be allowed to use electric power, and

One with 402 signatures of persons of Johannesburg, supporting the request of the Directors of said Tramway Company of Johannesburg.

As regards these memorials your Commission wishes to report that it agrees with the majority of memorialists not to grant electricity or steam as motive power to tramways in towns or cities generally or to Johannesburg specially, and recommend your Honourable Assembly to reply to memorialists in these terms :—

Art. 1055. "The first Volksraad taking into consideration the memorial, and the Memorial Commission's report in the matter of electric tramways now under consideration,

"Resolves : 'To agree with the report of the Memorial Commission.'"

— (6.) —

Minutes of First Volksraad, 1898. Page 1225. Art. 1855. Letter from Government, dated 23rd November 1898, requesting Raad to consider numerous applications for branch railway lines, and tram lines to mines exclusively for the transport of minerals and ore.

Art. 1855. Raad resolved to give the Government permission to make such grants provided the lines do not exceed 12 miles in length, and are exclusively for traffic of ore, minerals, coal, and mining necessaries from the mine to the nearest railway station. In no case is the expropriation law to be applied under such grants. If such lines are longer than 12 miles the special sanction of Raad is required.

— (7.) —

Minutes of First Volksraad, 1899. Page 408. Art. 415. Letter from Government to Raad, enclosing an application from J. E. Kent, on behalf of the New Modderfontein Gold Mining Company, for permission to lay an electric tramway for the transport of ore from the mine to the battery.

Art. 417. The First Volksraad taking into consideration the letter of the Goverment, dated 29th May 1899, containing an application for the construction of an electric tramway from the mine to the battery for the transport of quartz, taking into consideration First Volksraad Resolution, Art. 1355 of 1898,

"Resolve : 'To grant to the Executive Council the same powers and under the same conditions as those given in Art. 1855 of the resolutions of the First Volksraad of 1898 for steam tramways, for the construction of electric tramways for the transport of quartz upon mines.'"

PART V.

INDUSTRIAL.

— (1.) —

Government in terms of Art. 15 of President's speech presents to Raad for consideration various applications for industrial concessions and contracts, all of which had been duly published in the "Staats Courant." Minutes of 1890 Page 45. Art. 135.

— (2.) —

The Government submit certain industrial concessions and contracts for the consideration and confirmation of the Raad, including the draft concessions entered into, in accordance with the Raad's resolution, Article 546 of 1890, all of which had been published for public information in the "Staats Courant." Minutes of 1891. Page 55, Art. 111. (N.B. *See* Art. 546 of 1890.)

Art. 114.—"Referred it to Second Raad for treatment and report to the First Raad according to law." Art. 114.

— (3.) —

A commission of the First Volksraad, appointed by resolution, Art. 145 of 13th May, 1892, in connection with the establishment of a woollen-stuff factory, presented its report. Minutes of First Volksraad, 1892. Page 413. Art. 1259.

Government instructed to publish the report and proposals for the information of the public three months before the next Session, when the Raad will consider the report. Art. 1260.

Letter from Government, No. 927/93, dated May, 1893, laid upon the table. Minutes of First Volksraad, 1893.

Letter stated that in accordance with the instruction of the Volksraad, Article 1,260, dated 23rd August 1892, and on the report of the Commission appointed in connection with the establishment of woollen factories, the Government now submits two draft resolutions, report and correspondence, memorials, &c., and suggest that the draft resolutions be published three months before the ensuing sessions. (Report and draft resolutions printed in minutes of 1892, page 413). Page 369. Art. 1099.

"The Raad taking into consideration the letter of the Government, BB 927/93, together with the submitted report of the Commission, dated 22nd July, 1892, and the draft Volksraad resolution A and B as appendix. Taking into consideration the memorials in connection therewith." Art. 1101.

"Resolve: Not to agree to Appendix A., but to take Appendix B into consideration."

"The First Volksraad, taking into consideration the draft First Volksraad resolution now on the Order, and in connection therewith the various memorials on the subject, Art. 1104.

"Resolve: 1. To accept said draft resolutions as the resolution of the Raad.

"2. To give the Government the power to carry out the resolution.

"3. To instruct the Government, with the consent of the Executive Council, to enter into the proposed contract for the purpose set forth in the First Volksraad resolution. Such further stipulations and arrangements to be based upon the First Volksraad resolution as decided upon by the Executive Council, and considered necessary, and to which the contractor shall bind himself—*i.e.*, after the expiration of the term of six years the woollen stuff factory established by him is to be maintained in working order for a further period to be decided upon by the Executive Council.

"4. The Raad resolves to send to the first signatories upon the various memorials as answer a copy of this resolution, together with the confirmed draft of the First Volksraad resolution referred to."

The industrial scheme was passed by the casting vote of the Chairman, after exercising his vote in the original voting—namely, 12 to 12. Minutes of First Volksraad, 1896. Page 701.

The resolution reads as follows:—

"The First Volksraad, taking into consideration the scheme of the Commission appointed by the First Volksraad, Art. 628 of 18th July, regarding protection of manufacturers now on the Order; Art 1871.

"Further, taking into consideration the necessity for not delaying the establishment of factories owing to the serious circumstances in which the Republic finds itself on account of rinderpest and so forth—

"Resolves: To confirm without amendment said scheme as proposed by the Commission, and instructs the Hon. the Government to act accordingly."

Many members had their votes noted, giving reasons for voting against the scheme, the minority reasons being

Public had declared against protection, but in favour of bonuses.
That the scheme passed had not been submitted to the public.
The public had not been consulted.
That public were in favour of reducing taxation, whereas now the taxation would be increased.
That public would be heavily taxed without being consulted.

— (4.) —

Minutes of First Raad, 1896. Page 441. Art. 1050.

Memorial requesting that Kraut's contract for the erection of a wool factory should be confirmed, and that the transfer of the 100 morgen of ground of the Belfort town lands shall take place immediately the Government bonus of 2,000*l.* per annum shall have been earned.

The Memorial Commission reported as follows :—

(N.B. *See* Resolution, Art. 326 of 1895 below.)

"The Commission, taking into consideration First Volksraad resolution, Art. 326, dated 11th June, 1895, recommend to your Assembly not to grant a further extension, and further to refer memorialists to the last portion of said resolution. The form of prospectus was not attached to the memorials."

Raad confirmed the Memorial Commission report.

1895. Page 194. Art. 326.

Volksraad resolution, No. 326, referred to in preceding resolution :—

"The First Volksraad, taking into consideration Executive Council resolution, together with the submitted contract and other documents of Mr. A. Kraut; taking into consideration Volksraad resolution, Art. 1104, dated 16th August, 1893; taking into consideration the fact that the public have declared that they are opposed to protection,

"Resolve: '(*a*) To confirm the requested extension of six months, as set forth in the Executive Council's resolution.

"'(*b*.) Not to grant the request for protection; but the Volksraad declares that it is ready to take this matter into earnest consideration after a factory has been established capable of supplying certain woollen articles of quality in sufficient quantity in terms of said Volksraad resolution, Art. 1104.'"

The Volksraad resolve further :—

"After the expiration of the six months the Government be instructed to call for other applications in terms of Art. 1 of said contract."

— (5.) —

Minutes of Second Volksraad, 1895. Page 209. Art. 461.

Letter from Government stating that it submitted in accordance with that body's resolution draft regulations regarding the leasing of Government land for the purpose of planting coffee, sugar, &c., for confirmation.

Referred to First Raad as being beyond the powers of Second Raad.

— (6.) —

Minutes of First Volksraad, 1898. Page 1084. Art. 1634.

Memorial of Chamber of Commerce to cancel a contract entered into with Isodore Fink and published in the Gazette, or rather not to confirm it. Contract for manufacturing matches.

Memorial Commission recommend that the Raad treat the Memorial when the Government submit the contract for confirmation.

Art. 1635.

The Raad confirmed the Memorial Commission's report.

— (7.) —

Minutes of First Volksraad, 1899. Page 883. Art. 1069.

Memorial to Raad requesting Raad not to confirm the contract with Tranmer and Co. for the manufacture of calcium carbide.

Memorial Commission reports as follows —

The Commission recommend to your Assembly to take this Memorial into consideration when the Contract is submitted to your Assembly for confirmation.

Raad confirmed by acclamation.

— (8.) —

Minutes of First Volksraad, 1899. Page 884.

Memorials asking the Raad not to confirm certain contracts entered into by the Government, as specified hereunder. Similar resolutions were passed by the Raad in all of these matters, namely, to postpone the consideration of the Memorials until the Contracts are submitted for the confirmation of the Raad.

List of Contracts entered into by Government.

Arts. 1071 and 1072. Contract with G. R. Ockse for the manufacture of oil-cake and cattle-fodder.

Arts. 1073 and 1074. Contract with H. A. P. Burmister for the manufacture of candles.

Art. 1075. Contract with Heyman Orkin for the manufacture of cocoa, chocolate and chocolate sweets.

Art. 1076. Contract with S. Bauman for the manufacture of paper.

Art. 1077. Contract with L. C. J. Beerstecher for the manufacture of matches.

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Contract with Peycke and Co. for the manufacture of matches. Art. 1078.

Contract with J. Pen and Co. for the manufacture of matches. Art. 1079.

Contract with Percy Woolf for the manufacture of soap. Art 1080.

— (9.) —

Memorial praying the Raad to cancel all Concessions but more especially the Iron Concession. Minutes of First Volksraad, 1899. Page 847. Art. 1016.

The Memorial Commission's resolution is as follows:

Your Commission is of opinion that so long as Concessionaires observe their obligations according to contract, it is impossible to cancel such Concessions as requested.

The Commission recommend therefore to your Assembly to refer this Memorial to the Hon. the Government with instructions that if there are concessions the conditions and obligations of which have not been observed by the Concessionaire to cancel the same if the Law will allow.

Commission report accepted by the Raad.